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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

SITUATION OF HUMAN RIGHTS IN OCCUPIED KUWAIT

Report on the situation of human rights in Kuwait under Iraqi occupation, prepared by Mr. Walter Kälin, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1991/67

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Introduction

1. At its forty-seventh session, the Commission on Human Rights adopted resolution 1991/67, on 6 March 1991, entitled "Situation of human rights in Kuwait under Iraqi occupation". In that resolution, the Commission, condemning the invasion and occupation of Kuwait on 2 August 1990 by the military forces of Iraq, strongly condemned the Iraqi authorities and occupying forces for their grave violations of human rights against the Kuwaiti people and nationals of other States and in particular the acts of torture, arbitrary arrest, summary executions and disappearances in violation of the Charter of the United Nations, the International Covenants on Human Rights, and other relevant legal instruments. The Commission also expressed its serious concern about the systematic destruction, dismantling and pillaging of the economic infrastructure of Kuwait, which seriously undermined the present and future enjoyment by the Kuwaiti people of their economic, social and cultural rights and strongly condemned the failure of Iraq to treat all prisoners of war and detained civilians in accordance with the internationally recognized principles of humanitarian law.

2. In resolution 1991/67 the Commission requested its Chairman, after consultation with the Bureau, to designate a special rapporteur "with a mandate to examine the human rights violations committed in occupied Kuwait by the invading and occupying forces of Iraq". The Special Rapporteur was requested "to report as soon as possible to the General Assembly and to the Commission on Human Rights at its forty-eighth session", and to prepare, as soon as possible, a preliminary report and to transmit it to the Secretary-General.

3. At its first regular session of 1991, on 31 May, the Economic and Social Council adopted decision 1991/251 approving Commission resolution 1991/67.

4. The Chairman of the Commission of Human Rights, at its forty-seventh session, accordingly appointed Mr. Walter Kälin (Switzerland) Special Rapporteur on the situation of human rights in Kuwait under Iraqi occupation.

5. The Special Rapporteur submitted his preliminary report on 26 September 1991 to the Secretary-General. After dissemination to all States Members of the United Nations in accordance with paragraph 12 of Commission resolution 1991/67 that report (A/46/544) was discussed on 19 November 1991 by the Third Committee of the General Assembly.

6. The present, final, report which replaces the preliminary report is submitted to the Commission on Human Rights in accordance with the provisions of paragraph 9 of Commission resolution 1991/67.

7. In chapter I of the present report, the mandate of the Special Rapporteur, its origin, its limitations and its relation to other mandates are described, as well as the activities undertaken by the Special Rapporteur. Chapter II contains some historical and economic background information and a brief chronology of events relating to the invasion and occupation of Kuwait, which may promote a better understanding of the situation of human rights during this period. Chapter III sets out the general legal framework upon which the

Special Rapporteur based his report; it examines the applicability of customary law, the 1966 International Covenant on Human Rights, the Geneva Conventions of 1949 and other relevant legal instruments and discusses the interplay between these legal sources. In chapters IV and V the Special Rapporteur examines the information regarding violations of civil and political rights and of social, economic and cultural rights in Kuwait during Iraqi occupation. Chapter VI contains a memorandum submitted by the Special Rapporteur to the Government of Iraq and that Government's reply. In chapter VII the Special Rapporteur presents his conclusions and recommendations. The annexes contain relevant information gathered by the Special Rapporteur. Annex I consists of a list of places of detention in Kuwait and annex II contains documents allegedly of Iraqi origin submitted to the Special Rapporteur by Kuwaiti governmental and non-governmental entities which reportedly were found in Kuwait after the Iraqi withdrawal and contain information relevant to human rights violations. General Assembly resolution 46/135 of 17 December 1991 is reproduced in annex III.

I. THE MANDATE OF THE SPECIAL RAPPORTEUR

A. Origin of the mandate

8. The mandate of the Special Rapporteur was determined by the Commission on Human Rights at its forty-seventh session under agenda item 12 (b), "Question of the violation of human rights and fundamental freedoms in any part of the world with particular reference to colonial and other dependent countries and territories". In accordance with Commission resolution 1991/67, the Special Rapporteur had "to examine the human rights violations committed in occupied Kuwait by the invading and occupying forces of Iraq" (para. 9) and was authorized "to seek relevant information from the Government of Kuwait, specialized agencies and intergovernmental and non-governmental organizations" (para. 11).

9. The draft resolution (E/CN.4/1991/L.41/Rev.1) was introduced by the Observer for Kuwait. In doing so, he affirmed his Government's commitment to respect human rights in accordance with the principles set forth in the Charter of the United Nations and the provisions of the International Covenants on Human Rights, the Geneva Conventions of 1949 and Additional Protocol I thereto of 1977, relating to the Protection of Victims of International Armed Conflicts, and the Hague Convention IV of 1907, in addition to "the Constitution of Kuwait which states that all persons are equal before the law, a provision which applies to both Kuwaiti citizens and foreigners" (see E/CN.4/1991/SR.54, para. 14).

10. The scope of the proposed mandate came under discussion during consideration of the draft resolution. The delegation of Iraq introduced draft resolution E/CN.4/1991/L.90, containing proposed amendments to enlarge the scope of the Special Rapporteur's mandate to the situation of human rights in Kuwait after the end of the Iraqi occupation and to include human rights violations allegedly committed by the Kuwaiti authorities. After discussion, draft resolution E/CN.4/1991/L.90 was rejected by 32 votes to 2 with 5 abstentions (see E/CN.4/1991/SR.54, para. 29).

11. Draft resolution E/CN.4/1991/L.41/Rev.1, as introduced by the delegation of Kuwait, was adopted without amendments.

B. Content and limitations of the mandate

12. Commission resolution 1991/67 refers to the principles embodied in the Charter of the United Nations, the International Covenants on Human Rights and other relevant legal instruments, including civil and political rights, economic, social and cultural rights, and principles of humanitarian law. Thus, the expression "human rights violations" in paragraph 9 of the resolution determining the Special Rapporteur's mandate should be understood in a broad sense as to include all violations of all guarantees of international law for the protection of individuals relevant to the situation addressed by the mandate.

13. In other regards, however, the mandate of the Special Rapporteur is limited. A first limitation concerns the authors of alleged human rights violations, in so far as paragraph 9 of the resolution entitles the Special Rapporteur only to examine "human rights violations committed ... by the invading and occupying forces of Iraq".

14. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, at its forty-third session, adopted resolution 1991/7, in which it expressed its hope that the Special Rapporteur appointed pursuant to Commission resolution 1991/67 would give due attention to alleged gross violations of human rights currently occurring in Kuwait and would inform the Commission of developments affecting the situation of human rights in Kuwait since the withdrawal of Iraqi forces. The Special Rapporteur received allegations from several sources concerning arbitrary executions, torture and cruel, inhuman and degrading treatment, arbitrary arrests, unfair trials, enforced or involuntary disappearances and large-scale expulsions and deportations of non-Kuwaitis which reportedly took place after the Iraqi occupying forces had retreated from Kuwait. The Special Rapporteur took into account the clear wording of the mandate adopted by the Commission on Human Rights and the history of its adoption, on the one hand, and the respective fields of competence of the Commission and the Sub-Commission, on the other, and considered that he was not entitled to examine the present situation of human rights in Kuwait. Such reports, however, might appropriately be examined within the framework of relevant thematic procedures set up by the Commission on Human Rights.

15. A second limitation is of a geographical nature. In accordance with paragraph 9 of Commission resolution 1991/67 the Special Rapporteur is only entitled to examine human rights violations committed "in occupied Kuwait". However, in the resolution the Commission also referred to "the abduction from Kuwait and the continued detention of prisoners of war and civilians" and demanded their immediate release (see eighth preambular paragraph and para. 6). The Special Rapporteur, accordingly, interpreted this clause as meaning human rights violations having originated in occupied Kuwait and, as a consequence, also examined information he received concerning the fate of persons allegedly deported from Kuwait by Iraqi forces during the occupation and detained in Iraq.

16. Finally, paragraph 11 of resolution 1991/67 restricts the Special Rapporteur in his contacts with Governments, authorizing him to seek relevant information from the Government of Kuwait, the specialized agencies and intergovernmental and non-governmental organizations, but not from Governments other than that of Kuwait. The Special Rapporteur concluded that this limitation did not, however, prevent him from accepting information which might be submitted to him by other Governments. In this regard it should be noted that the Government of Iraq expressed its interest in submitting relevant information to the Special Rapporteur after he had presented his preliminary report to the Third Committee of the General Assembly (see chapter VI).

C. Relation to other mandates

17. At the request of the Government of Kuwait, in March 1991 the Secretary-General appointed a high-level mission to visit Kuwait under the leadership of Mr. Abdurahim A. Farah, a former Under-Secretary-General, who was assisted by Mr. Victor Sukhodrev and Mr. John Pace. The mandate of the mission, which took place from 16 March to 4 April 1991, was, inter alia, to assess the loss of life incurred during the Iraqi occupation of Kuwait and to examine the occupation forces' practices against the civilian population of that country and to submit a report to the Secretary-General for transmission to the Security Council. The report of the mission (document S/22536 of 29 April 1991), as far as it referred to human rights violations, was an interim one. For the Special Rapporteur it served as an excellent point of departure and considerably facilitated his own efforts to prepare a comprehensive report. The two reports, addressed to different organs of the United Nations, thus complement each other.

18. In a letter addressed to the Special Rapporteur in June 1991, the Under-Secretary-General for Human Rights expressed his assurance that the Secretariat would do everything possible to ensure coordination of the Special Rapporteur's activities with those of other parts of the human rights programme. Aware of the need for coordination between his own mandate and that of the rapporteur on the situation of human rights in Iraq, the Special Rapporteur called upon the Secretariat to ensure such coordination, particularly in regard to the question of persons deported from Kuwait to Iraq during the occupation. Subsequently, the Special Rapporteur on Kuwait under Iraqi occupation and the Special Rapporteur on Iraq agreed that the question of missing persons reportedly abducted from Kuwait by the Iraqi occupying forces and allegedly still detained in Iraq would be discussed in the present report.

D. Activities of the Special Rapporteur

19. The Special Rapporteur undertook a first visit to Kuwait from 12 to 20 June 1991 and a second visit from 31 August to 6 September 1991. During these visits he was received by the Ministers of Justice and of the Interior, the Under-Secretaries of Foreign Affairs and of Health and other senior officials of the respective ministries. He held talks with representatives of the Kuwaiti National Committee for Following Up P.O.W. and Missing Affairs (formerly the Kuwaiti Human Rights Committee), the Kuwaiti Red Crescent Society, the Kuwaiti Association for the Defence of Victims of War and the Kuwaiti Social Solidarity Fund for the Welfare of Martyrs and P.O.W.s, the University of Kuwait, the Kuwait Institute for Scientific Research and the Arab Bar Association. He also met many other persons who had remained in Kuwait during the occupation, including doctors, lawyers, religious leaders, members of the diplomatic community and journalists. In addition, the Special Rapporteur interviewed more than 80 victims or eyewitnesses of human rights violations allegedly committed by Iraqi occupying forces. He visited several sites relevant to his mandate, including former places of detention, looted and destroyed buildings, a cemetery, a camp for displaced persons at Abdali and burning oilfields.

20. The Special Rapporteur further took note of the summary records of meetings of various United Nations bodies in which the human rights situation in Kuwait under Iraqi occupation was discussed, including those of the forty-seventh session of the Commission on Human Rights and the forty-third and forty-fourth sessions of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. He also consulted the following reports submitted by Iraq to the monitoring bodies set up to implement the principal international human rights instruments to which it is a party: second periodic report submitted by States parties under article 40 of the International Covenant on Civil and Political Rights of 21 April 1986 (CCPR/C/37/Add.3); third periodic report submitted by States parties under article 40 of the Covenant of 5 June 1991 (CCPR/C/64/Add.6).

21. In accordance with his mandate, on 17 May 1991, the Special Rapporteur sent a request for information to the relevant specialized agencies of the United Nations, and to governmental and non-governmental organizations. He took note of information provided pursuant to his request, particularly of reports prepared by UNESCO, WHO, UNICEF and UNEP. He also took into account reports prepared by non-governmental organizations, as well as statistical information on the registration and repatriation of persons from Iraq to Kuwait provided to him by the International Committee of the Red Cross.

II. BACKGROUND

22. This chapter provides some general background information on Kuwait and outlines, in a historical context, events which were relevant to the human rights situation in Kuwait during the Iraqi occupation which lasted from 2 August 1990 to 26 February 1991.

A. General background information on Kuwait

23. The history of Kuwait as a distinct political entity goes back more than 200 years. It was part of the Ottoman empire when, in the middle of the eighteenth century, members of the Al-Sabah family started to rule it under conditions of relative autonomy. In 1899, Sheikh Mubarak signed an agreement with Great Britain whereby Kuwait became a British protectorate. It held this status until it became independent in 1961, a step that was criticized at the time by the Republic of Iraq, which claimed Kuwait as an integral part of Iraq. On 4 October 1963, however, the Government of Iraq recognized the full independence and sovereignty of Kuwait. In 1963 Kuwait was admitted to membership of the United Nations.

24. The Constitution of Kuwait of 14th of Jumada al-Thani 1382 (11 November 1962) provides that "Kuwait is a hereditary Emirate, the succession to which shall be in the descendants of the late Mubarak Al-Sabah" (art. 4), with Islam as the religion of the State (art. 2) and Arabic as the official language (art. 3).

25. In 1985, the population of Kuwait, according to the official 1985 census, totalled 1,697,301. Of that total, 681,288 persons (40.1 per cent) were Kuwaiti citizens and 1,016,013 (59.9 per cent) were non-Kuwaitis (including 642,814 persons of Arab origin, 355,947 Asians, 2,039 Africans, 11,908 Europeans and 3,142 Americans). According to estimates of the Kuwaiti Central Statistics Administration, the population had risen to 2,142,600 persons prior to 2 August 1990. This population was comprised of 826,586 Kuwaitis (38.6 per cent) and 1,316,014 non-Kuwaitis (61.4 per cent). Among the non-Kuwaitis were an unknown number of stateless persons (also referred to as "bidoun") who were long-term residents of Kuwait possessing a special status with limited rights. It was estimated that during the Iraqi occupation more than two thirds of the civilian population left Kuwait (report of the Farah mission, S/22536, para. 6).

B. Events relating to the human rights situation in Kuwait during the Iraqi occupation

26. On 17 July 1990, President Saddam Hussain of Iraq made a speech, in which he accused the Kuwaiti royal family of damaging the Iraqi economy by forcing down the price of oil by exceeding its OPEC production quota. He also accused Kuwait of taking Iraqi crude oil worth 2.4 billion dollars from the Rumaila oilfield and stated that Iraq should be granted a 12 billion dollar write-off of war loans owed to Kuwait. On 31 July 1990, negotiations were held in Jeddah between Izzat Ibrahim, Deputy Chairman of the Iraqi Revolutionary Council and the Kuwaiti Crown Prince and Prime Minister, Sheikh Saad Al Abdullah Al-Sabah.

27. On 2 August 1990, Iraqi forces invaded Kuwait. Iraq claimed that Kuwait had been "an integral part of Iraq until the First World War", and stated that it was reasserting its sovereignty over Kuwait which had been severed by the British colonial Administration. Immediately following the invasion, Iraq set up a nine-man "Provisional Free Kuwait Government" headed by Colonel Ala Hussein Ali. On 8 August, the transitional Government was dismissed and Iraq proclaimed the annexation of Kuwait. On 28 August, it was announced that the area of Kuwait bordering Iraq had been incorporated as an extension of the province of Basra. The rest of Kuwait was declared to be the nineteenth province of Iraq.

28. In September and October 1990 the Iraqi authorities issued several regulations aimed at the "Iraqization" of Kuwait, inter alia:

(a) Kuwaiti courts were "affiliated to the chairmanship" of the Basra Court of Appeal (Statement No. 5853 of the Minister of Justice of 1 September 1990, published in Alwaqai Aliraqiya (the official gazette of the Republic of Iraq), vol. 33, No. 41, 10 October 1990, p. 3);

(b) The Kuwaiti dinar, which had earlier been declared at parity with the Iraqi dinar, was abolished on 26 September 1990 (Revolutionary Command Council resolution No. 383 of 6th Rabii'Al - Awwal, 1411 H./25 September 1990, published in Alwaqai Aliraqiya, vol. 33, No. 41, 10 October 1990, p. 2);

(c) Kuwaiti establishments and organizations were dissolved and their properties and rights were incorporated into Iraqi administrative structures (for example, Revolutionary Command Council resolution No. 369 of 19th Safar 1411 H./9 September 1990 dissolving the Kuwaiti Airlines establishment, published in Alwaqai Aliraqiya, vol. 33, No. 40, 3 October 1990, p. 7; Revolutionary Command Council resolution No. 413 of 15th Rabii'Al-Thani, 1411 H./3 November 1990 dissolving the Kuwait Central Bank, published in Alwaqai Aliraqiya, vol. 33, No. 47, 21 November 1990, p. 2; Revolutionary Command Council resolution No. 423 of 30th Rabii'Al-Thani, 1411 H./18 November 1990 dissolving the Kuwait General Transport Company, published in Alwaqai Aliraqiya, vol. 33, No. 49, 5 December 1990, p. 2).

(d) Kuwaiti citizens were obliged, as of 1 October 1990, to exchange their Kuwaiti identity papers for the Iraqi identity card (Revolutionary Command Council resolution No. 383 of 6th Rabii'Al - Awwal, 1411 H./25 September 1990, published in Alwaqai Aliraqiya, vol. 33, No. 41, 10 October 1990, p. 2).

In addition, car licence plates had to be replaced by Iraqi ones identifying Kuwait as an Iraqi province and street names specific to Kuwait were changed.

29. Between 2 August 1990 and 29 November 1990 the United Nations Security Council adopted 12 resolutions concerning the occupation of Kuwait by Iraq:

(i) Resolution 660 (1990) of 2 August demanding immediate retreat by Iraq and urging Iraq and Kuwait to enter into negotiations and to make use of the Arab League to this end;

(ii) Resolution 661 (1990) of 6 August imposing economic sanctions on Iraq;

(iii) Resolution 662 of 9 August declaring the annexation of Kuwait as null and void under international law and appealing for abstention from any contact with Iraq which could be interpreted as a recognition of the annexation;

(iv) Resolution 664 (1990) of 18 August urging the release of all hostages;

(v) Resolution 665 of 25 August urging all member nations to deploy naval forces in the Gulf and to take all action necessary to ensure compliance with the economic sanctions against Iraq;

(vi) Resolution 666 (1990) of 14 September requesting that all distribution of food aid be undertaken by humanitarian organizations such as the United Nations specialized agencies and the International Committee of the Red Cross;

(vii) Resolution 667 (1990) of 24 September condemning all acts of aggression against foreign embassies and their nationals in Kuwait and calling for the liberation of all foreign hostages;

(viii) Resolution 669 (1990) of 24 September establishing a committee to examine all requests for assistance by member countries affected by adherence to the economic embargo against Iraq;

(ix) Resolution 670 (1990) of 25 September extending the embargo to air traffic with Iraq and calling for the detention of Iraqi freighters in foreign ports if the embargo was suspected of having been violated;

(x) Resolution 674 (1990) of 29 October reminding Iraq that it was responsible under international law for all damages, losses or injuries suffered by Kuwait or third countries as a result of its illegal occupation of Kuwait;

(xi) Resolution 677 (1990) of 28 November condemning all attempts by Iraq to make demographic modifications in Kuwait and charging the United Nations with safeguarding a copy of the Kuwaiti civil registry;

(xii) Resolution 678 (1990) of 29 November setting a deadline for Iraq to comply with all the previously adopted relevant Security Council resolutions and, if by 15 January 1991 Iraq did not comply, authorizing the use of all means necessary to uphold and implement these resolutions and to restore peace and security in the area.

30. On 16 January 1991, the forces of a coalition of 26 States launched pre-emptive air strikes against Iraq. On 26 February 1991 Iraq began a complete and unconditional retreat from Kuwait.

31. During the whole period of Iraqi occupation of Kuwait, the Government of Iraq failed to respond to humanitarian appeals launched by various intergovernmental and non-governmental organizations on behalf of victims of human rights violations allegedly committed by Iraqi forces in Iraq and Kuwait.

III. LEGAL FRAMEWORK

32. In this chapter the different sources of law applicable to the situation of human rights in Kuwait under Iraqi ocupation are discussed in general terms. In this regard, the Special Rapporteur took note of relevant Security Council resolutions, including resolution 662 (1990) stating that "annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void" and resolution 664 (1990) reaffirming this decision.

A. Interaction between human rights and humanitarian law

33. There is consensus within the international community that the fundamental human rights of all persons are to be respected and protected both in times of peace and during periods of armed conflict.

34. In 1967, the Security Council emphasized in its resolution 237 (1967) that essential and inalienable human rights should be respected even in times of war and recommended that Governments respect the humanitarian principles set forth in the Geneva Conventions. The Final Act of the International Conference on Human Rights, held in Teheran in 1968 (United Nations Publications, Sales No. E.68.XIV.2, p. 18) further developed the synthesis between human rights and humanitarian law when it observed that "... widespread violence, ... including massacres, summary executions, torture, inhuman treatment of prisoners, killing of civilians in armed conflicts and the use of chemical and biological means of warfare ... eroded human rights", and that it was "essential for humanitarian principles to prevail even during periods of armed conflict". Accordingly, the General Assembly, at its twenty-fifth session, on 9 December 1970, reconfirmed the inviolability of these rules in several resolutions regarding the protection of human rights in armed conflicts. Among them was resolution 2675 (XXV), in which it affirmed certain "basic principles for the protection of civilian populations in armed conflicts", the first of which being that fundamental human rights, as accepted in international law and laid down in international instruments, continued to apply fully in situations of armed conflict.

B. Customary international law

1. Elementary considerations of humanity

35. The International Conference on Human Rights held in Teheran in 1968 (see para. 34), requested the Secretary General, "after consultation with the International Committee of the Red Cross, to draw the attention of States members of the United Nations system to the existing rules of international law on the subject and to urge them to observe that in all armed conflicts, the inhabitants and belligerents are protected in accordance with 'the principles of the law of nations derived from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience'". This clause, known as the Martens clause, was first included in the preamble to The Hague Regulations of 1907 concerning the Laws and Customs of War on Land. It is also included in the four Geneva Conventions (art. 63 of the First, art. 62 of the Second, art. 142 of the Third and art. 158 of the Fourth Geneva Convention).

36. Three customary principles of human rights protection are incorporated in the Martens clause: (i) that the right of parties to choose the means and methods of warfare, i.e. the right of the parties to a conflict to adopt means of injuring the enemy, is not unlimited; (ii) that a distinction must be made between persons participating in military operations and those belonging to the civilian population to the effect that the latter be spared as much as possible; and (iii) that it is prohibited to launch attacks against the civilian population as such.

37. The Martens clause itself has acquired customary character and thus applies independently of participation in treaties containing it. It cannot be derogated from under any circumstances. It applies whether or not a state of war has been declared or the state of war is, or is not, recognized by a party to the conflict. Thus, in the Corfu Channel case, the International Court of Justice, as early as 1949, recognized the customary nature of these humanitarian requirements when it stated that "elementary considerations of humanity..." belong to the general and well-recognized principles which have to be observed in peacetime as well as in times of armed conflict (The Corfu Channel Case, Merits, I.C.J. Reports 1949, p. 22).

38. More recently, the International Court of Justice expanded upon the Corfu doctrine regarding customary principles of law as they concern human rights. In the Barcelona Traction case of 1970, the International Court of Justice recognized that, in international law, there are "obligations of a State towards the international community as a whole" (Case concerning the Barcelona Traction, Light and Power Company Limited, second phase, Judgement of 5 February 1970, I.C.J. Reports 1970, para. 33). Such obligations may derive "from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person" some of which "have entered into the body of general law" (para. 34).

2. Common article 3 of the 1949 Geneva Conventions

39. In the Nicaragua case of 1986, the International Court of Justice reiterated the existence of "fundamental general principles of humanitarian law" and stated that "the Geneva Conventions are in some respect a development, and in other respects no more than the expression, of such principles" (Nicaragua v. USA, Merits, I.C.J. reports 1986, para. 218). Among these fundamental principles which are binding upon States even where the Conventions are not applicable as treaty law (as was the case in the problem to be examined by the Court, see Nicaragua v. USA, p. 112-3, paras. 216 and 217) are, according to the Court, the rules contained in common article 3 of the four Geneva Conventions. In the Court's opinion, "they are rules which ... reflect what the Court in 1949 called 'elementary considerations of humanity'" (para. 218, quoting the Corfu Channel case, Merits, I.C.J. Reports 1949, p. 22).

40. According to article 3 common to the four Geneva Conventions, each State party,

> "[i]n the case of armed conflict not of an international character occurring in the territory of one of the High Contracting parties ... shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular, humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

41. Although, as treaty law, common article 3 only applies to armed conflicts of a non-international character, the rules of customary law contained in it, must, according to the Court, also be observed in international conflicts:

"There is no doubt that, in the event of international armed conflicts, these rules also constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts" (Nicaragua v. USA, Merits, I.C.J. Reports 1986, p. 114, para. 218).

3. Article 75 of the 1977 Additional Protocol I to the 1949 Geneva Conventions

42. Iraq is not a party to the 1977 Additional Protocol I to the Geneva Conventions of 1949. Nevertheless, certain provisions of Protocol I, particularly those relating to the protection of civilians and persons detained by the occupying Power, are considered customary in nature in that they reiterate and extend provisions already set down in the Geneva Conventions which through time and usage have acquired international consensus.

43. Most important among these are the standards set out as fundamental guarantees for detainees in article 75. In accordance with article 75 (1):

"Persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of such persons."

44. Article 75 (2) provides that: "violence to the life, health, or physical or mental well-being of persons, in particular: (i) murder; (ii) torture of all kinds, whether physical or mental; (iii) corporal punishment; and (iv) mutilation" are, "prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents". The same is true for "(b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault; (c) the taking of hostages; (d) collective punishments; and (e) threats to commit any of the foregoing acts".

45. It should be noted that under Additional Protocol I, article 75, certain categories of persons, including partisans, are protected, whereas, under the Geneva Conventions, such persons are not fully protected. The provisions of article 75 (2) correspond, to a large extent, to the basic non-derogable standards of human rights treaties.

46. Article 75 (4) sets out standards of fair trial to be observed at all times. These procedural guarantees, which correspond to those of the International Covenant on Civil and Political Rights, may gradually be acquiring force as principles of customary law concerning treatment of all persons in detention during armed conflicts.

4. Universal Declaration of Human Rights

47. On 10 December 1948, the General Assembly, in resolution 217 (III) A, adopted and proclaimed the Universal Declaration of Human Rights "as a common standard of achievement for all peoples and all nations by progressive measures, national and international, to secure their universal and effective recognition and observance". The Declaration, in linking human rights and peace, states that "whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind" the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". It, furthermore, sets out that "members have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms".

48. The Declaration establishes that "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind ..." and that "no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty". Thus it is also applicable to occupied territories.

49. While the Universal Declaration is of importance as a ground-breaking general statement of international concern for human rights, it is also important in that at least its basic tenets have now gained customary acceptance.

C. Applicability of the International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights

50. The Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights of 1966 codify and expand upon the guarantees of the Universal Declaration of Human Rights. On 25 January 1971, Iraq became a party to both Covenants, undertaking, as is stated in the preamble to both Covenants, all obligations therein in accordance with "the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms".

1. International Covenant on Economic, Social and Cultural Rights

51. In accordance with article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, each State party "undertakes to take steps ..., to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures". Neither this nor any other provision of the Covenant limits its application to the territory of States parties. In addition, the Covenant does not provide for derogations in times of public emergency or armed conflict. Therefore, a State party remains bound by the Covenant if it occupies the territory of another State and exercises there de facto State power.

52. Although the Covenant does not explicitly allow for derogations in time of public emergency, the guarantees of the Covenant might in times of armed conflict apply only to a limited extent, because available resources in the sense of article 2, paragraph 1, may be limited. It has to be noted, however, that according to general comment No. 3 (1990), para. 10, adopted by the Committee on Economic, Social and Cultural Rights at its fifth session, "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant". Therefore, "any retrogressive measures ... need to be fully justified" by showing that even with "the full use of the maximum available resources" the level formerly achieved cannot be maintained (E/1991/23.E/C.12/1990/8, annex III). The prohibition of unjustifiably depriving persons of the basic guarantees provided by economic, social and cultural rights is furthermore implicitly contained in article 5 which prevents States parties from interpreting the Covenant "as implying for any State ... any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein".

53. If in a given State the realization of the rights of the Covenant achieves a standard which is higher than the mimimum essential levels referred to by the Committee in its general comment 3 (1990), the actual enjoyment of these rights may, in accordance with article 4, be limited; however, such limitations have to be "determined by law", they must be "compatible with the nature of

these rights" and they may be taken "solely for the purpose of promoting the general welfare in a democratic society". In addition, such limitations may not be discriminatory because, according to article 2, paragraph 2 of the Covenant, provided that States parties "undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". As the Covenant does not allow for any derogations from article 2 of the Covenant in time of public emergency, these requirements must be observed even in times of armed conflict.

54. Thus, it has to be examined whether or not alleged deprivations of persons living in Kuwait under Iraqi occupation of the economic, social and cultural rights guaranteed in the Covenant were justified in the light of the situation prevailing in Kuwait during the period of the occupation or whether they were aimed at the destruction of the minimum essential levels of each of the guarantees of the Covenant on Economic, Social and Cultural Rights.

2. International Covenant on Civil and Political Rights

(a) Scope of application

55. Article 2, paragraph 1, of the International Covenant on Civil and Political Rights sets out the scope of application. Each State party to the Covenant:

> "undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

56. As recognized by the Security Council in its resolutions 660 (1990), and 661 (1990) of 2 August and 6 August 1990, Iraqi forces invaded Kuwait on 2 August 1991 breaching the sovereignty, independence and territorial integrity of the State of Kuwait and usurping the authority of the legitimate Government of Kuwait in violation of international law. Whereas accordingly it is recognized by the international community that Kuwait was not, during the occupation, "within the territory" of Iraq, the application of the obligations pursuant to the International Covenant on Civil and Political Rights is not precluded by the stipulation of article 2 regarding territoriality.

57. According to the Human Rights Committee, established pursuant to Part IV of the International Covenant on Civil and Political Rights, the extraterritorial application of this Covenant is not barred when the alleged violations take place on foreign territory, provided that the perpetrator of the violations acting on foreign soil is an agent of a State party to the Covenant.

(a) In two 1976 cases regarding arrest and abduction, unlawful detention, torture, cruel and other inhuman or degrading treatment on foreign territory and subsequent deportation to the actual territory of the State

party, by its agents, the Committee, in opinions rendered in accordance with article 5 of the 1966 Optional Protocol, ruled in favour of extraterritorial application. The Committee invoked article 5 (1), which prohibits interpreting the Covenant "as implying for any State ... any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized" therein and stressed that "it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory" (Communication No. R.12/52, López Burgos v. Uruguay, para. 12.3 and Communication No. R.13/56, Lilian Celiberti v. Uruguay, para. 10.3, both of 29 July 1981, document A/36/40, annexes XIX and XX).

(b) In these two cases, under rule 94 (3) of the Committee's provisional rules of procedure, an individual concurring opinion was appended to the Committee's views affirming the extraterritorial applicability of the Covenant but clarifying and expanding upon the reasoning of the Committee. The concurring opinion rested on the argument that

> "[t]o construe the words 'within its territory' pursuant to their strict literal meaning as excluding any responsibility for conduct occurring beyond the national boundaries would ... lead to utterly absurd results. The formula was intended to take care of objective difficulties which might impede the implementation of the Covenant in specific situations".

The opinion continues that all these factual situations

> "have in common, however, that they provide plausible grounds for denying the protection of the Covenant. It may be concluded, therefore, that it was the intention of the drafters, whose sovereign decision cannot be challenged, to restrict the territorial scope of the Covenant in view of such situations where enforcing the Covenant would be likely to encounter exceptional obstacles. Never was it envisaged, however, to grant States parties unfettered discretionary power to carry out wilful and deliberate attacks against the freedom and personal integrity of their citizens living abroad. Consequently, despite the wording of article 2 (1), the events which took place outside [the territory of the State Party] come within the purview of the Covenant". (A/36/40, annex XIX, appendix, and annex XX, appendix).

(c) During its forty-second session, held at Geneva, the Human Rights Committee considered, in accordance with article 40 of the Covenant, the third periodic country report submitted by Iraq and covering the period from 1 January 1986 to 31 May 1991 (CCPR/C/64/Add.6). In this context members of the Committee asked several questions pertaining to human rights violations allegedly committed by Iraq during its occupation of Kuwait (see Report of the Human Rights Committee, A/46/40, paras. 625, 636 and 640). Members of the Committee, in accordance with its earlier views regarding extraterritorial application of the Covenant, stressed the Committee's competence to ask such questions when it was challenged by the delegation of Iraq. Furthermore, the Committee, in its concluding observations, stressed "Iraq's clear responsibility under international law for the observance of human rights during its occupation" of Kuwait (A/46/40, para. 652).

58. It may thus be concluded that the situation of Iraqi occupation of Kuwait, despite the wording of article 2, paragraph 1, falls within the scope of application of the International Covenant on Civil and Political Rights. The Committee, as the competent interpretive body of the terms and application of the Covenant, has in the above-described cases, by reliance either on article 5 of the Covenant or on the alternative formula of the individual opinion, established strong precedents for the extraterritorial applicability of the Covenant. The facts of the cases analysed by the Committee to establish this precedent are not distinguishable in essence from the case of human rights violations committed by Iraqi forces during the occupation of Kuwait, whether against Iraqi nationals or other nationals under Iraqi (de facto) jurisdiction. Thus, application to Iraq of obligations under the Covenant for these violations is in accordance with established precedents.

59. In addition, it has to be stressed that States parties are also obliged to ensure the rights contained in the Covenant to nationals of foreign countries even if those countries have not ratified the Covenant. In this regard, the Human Rights Committee, in its general comment 15 (27), stated that "[i]n general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness" (see CCPR/C/21/Rev.1).

(b) Derogations

60. According to article 4, paragraph 1, "[i]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed" States parties "may take measures derogating from their obligations under the present Covenant". However, such derogations are only permitted "to the extent strictly required by the exigencies of the situation" and they have to be consistent with their other obligations under international law. Paragraph 3 of this provision states that a State party "availing itself of the right of derogation shall immediately inform the other States parties ..., through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated".

61. Some of the basic human rights apply unconditionally even in times of public emergency. Article 4, paragraph 2, of the Covenant states that "[no] derogations from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18 may be made under this provision".

62. During the time of the invasion and occupation of Kuwait, including the period of armed conflict after 16 January 1991, Iraq, according to its third periodic report, "did not declare a state of emergency, but the de facto state of war necessarily led to unavoidable measures" (CCPR/C/64/Add.6, para. 21). A communication in the sense of article 4, paragraph 3 was not made.

63. According to the Human Rights Committee, the right to derogate, which is of a substantive character, "may not depend on a formal notification being made pursuant to article 4 (3) of the Covenant" (Communication No. R.8/34, Jorge Landinelli Silva v. Uruguay, A/36/40, annex XII). However, according to general comment 5 (13) regarding article 4,

"[t]he Committee holds the view that measures taken under article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and that, in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made. The Committee also considers that it is equally important for States parties, in times of public emergency, to inform the other States parties of the nature and extent of the derogations they have made and of the reasons therefor" (CCPR/C/21/Rev.1).

D. Application of the Geneva Conventions of 1949

1. Applicability

64. On 14 February 1956 Iraq became a State party to the Geneva Conventions of 1949, undertaking to respect and to ensure respect for these Conventions in all circumstances. Kuwait became a State party on 2 September 1967. All States members of the coalition are States parties to the Conventions. In the context of the occupation of Kuwait, the Third Geneva Convention of 1949 Relative to the Treatment of Prisoners of War and the Fourth Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War are particularly relevant.

65. Common article 2, of the Geneva Conventions of 1949 provides that they "shall apply to all cases of declared war or any other armed conflict which may arise between two or more High Contracting Parties, even if the state of war is not recognized by one of them". They "shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if said occupation meets with no armed resistance".

66. Regarding the fate of the civilian population in occupied Kuwait, the Security Council, in accordance with this provision, affirmed in its resolution 674 (1990) of 29 October 1990 "that the Fourth Geneva Convention applies to Kuwait and that as a High Contracting Party to the Convention, Iraq is bound to comply fully with all its terms". The same affirmation is contained in General Assembly resolution 45/170 on the situation of human rights in occupied Kuwait.

2. Protection of prisoners of war

67. Prisoners of war, in the sense of the Third Geneva Convention, are, inter alia, "members of the armed forces of a Party to the conflict as well as members of militia or volunteer corps forming part of such armed forces" (art. 4 A, para. 1) and "members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power" (art. 4 A, para. 3).

68. Captured "members of other militia and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied", are only considered to be prisoners of war if they are "commanded by a person responsible for his subordinates", wear "a fixed distinctive sign recognizable at a distance", carry their "arms openly" and

conduct "their operations in accordance with the laws and customs of war" (art. 4 A, para. 2). If they do not satisfy these conditions, they are treated as civilians in accordance with the Fourth Geneva Convention and do not benefit from prisoner of war status including specifically the prohibition on death sentences for having taken a life while participating directly in armed conflict.

69. In accordance with article 5, paragraph 1, the Convention applies to prisoners of war "from the time they fall into the power of the enemy and until their final release and repatriation". If there are doubts whether "persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal".

3. Protection of civilians

70. Article 4 of the Fourth Geneva Convention provides that "[p]ersons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals".

71. In accordance with article 6, the Convention is applicable "from the outset of any conflict or occupation" until "one year after the general close of military operations"; however, "[p]rotected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention".

72. Under article 5, specific derogations from certain articles pertaining to the treatment of civilians are allowed for strict military necessity. Thus, a person who is in the territory of a party to the conflict "shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State" if this State "is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile" to its own security. In addition, persons detained as spies or saboteurs or definitely suspected of having committed acts other than as combatants in armed conflict "hostile to the security of the Occupying Power" shall, "in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention". However, article 5 also sets out the non-derogable obligation that

> "in each case, such persons shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be".

IV. SITUATION OF CIVIL AND POLITICAL RIGHTS AND THE CORRESPONDING PROTECTION UNDER THE LAWS OF ARMED CONFLICT IN KUWAIT UNDER THE IRAQI OCCUPATION

73. The period between 2 August 1990 and 26 February 1991 may, for the purposes of analysing the human rights situation in Kuwait under Iraqi occupation, be divided into three periods, each of which demonstrates a different pattern of human rights violations:

(a) The period of the invasion starting on 2 August 1990 and lasting a few days until armed resistance by regular Kuwaiti armed forces ended and Iraqi occupying forces were installed;

(b) The period of the occupation, i.e. the time between the middle of August and the middle of February 1991, characterized by continuing active and passive resistance by citizens and residents of Kuwait aimed at combating and frustrating Iraq's policy of occupying and annexing Kuwait and the attempts of the occupying forces to break this resistance;

(c) The period before the retreat beginning on 19 February 1991, when Iraqi occupying forces started mass arrests and deportations of Kuwaiti men to Iraq.

This distinction between the period of the invasion beginning on 2 August 1990, the period of the ongoing occupation and the period of mass arrests starting on 19 February 1991 will be used as an analytical framework throughout this report.

A. Prohibition of arbitrary arrest, detention and deportation

1. Legal framework

74. Article 9 of the International Covenant on Civil and Political Rights prohibits "arbitrary arrest or detention" and sets out that "[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law", with all the judicial safeguards set out in articles 9, 14, 15 and 16 of the Covenant. In time of public emergency including periods of armed conflict, article 4 of the Covenant allows for derogations from these provisions. In such cases, arrested and detained persons are protected by the judicial guarantees accorded by the Geneva Conventions.

75. Article 21 of the Third Geneva Convention, provides that "[t]he Detaining Power may subject prisoners of war to internment", but they must be treated humanely (art. 13); "their persons and their honour" must be respected "in all circumstances" (art. 14). The Detaining Power, when deciding upon the transfer of prisoners of war, shall, in accordance with article 46, take into account the interests of the prisoners themselves, particularly as to not increasing the difficulty of their repatriation. Article 118 stipulates that prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

76. Article 64 of the Fourth Geneva Convention provides that the Occupying Power may "subject the population of the occupied territory to provisions which are essential to enable the Occupying Power ... to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration". These measures may include arrest or detention of members of the civilian population. Subject to the provisions of article 5 (see para. 72 above), the complete range of judicial safeguards, as set out in articles 67 to 75, must be granted in these cases. In accordance with article 49, "individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power ... are prohibited, regardless of their motive". Article 133 provides that "internment shall cease as soon as possible after the close of hostilities" and article 134 that "the High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence, or to facilitate their repatriation".

77. Article 34 of the Fourth Geneva Convention provides that "the taking of hostages is prohibited". In regard to the use of persons as "human shields", article 28 stipulates that "the presence of a protected person may not be used to render certain points or areas immune from military operations".

78. There are, in international law, special provisions on the rights and immunities of diplomatic and consular staff. Among them, articles 22 and 27 of the 1961 Vienna Convention on Diplomatic Relations are of special importance, as they provide for the inviolability of the premises of diplomatic missions and of the person of diplomatic agents. Regarding these guarantees, the International Court of Justice, in the case of the American hostages in Iran, held that "[t]here is no more fundamental prerequisite for the conduct of relations between States than the inviolability of diplomatic envoys and embassies, so that throughout history all creeds and cultures have observed reciprocal obligations for that purpose" (USA v. Iran, Order of 15 December 1975, ICJ Reports 1979, p. 19; reaffirmed in Judgment of 24 May 1980, Merits, ICJ Reports 1980, p. 42).

2. Evaluation of facts

(a) Detention of prisoners of war

79. During the invasion of Kuwait and the first days following it, large numbers of the Kuwaiti armed forces who were either Kuwaiti citizens or stateless residents of Kuwait (bidoun) were taken prisoner of war. They all were transferred to Iraq and detained there throughout the occupation. Other members of the Kuwaiti armed forces who were captured later, during the time of the occupation, were interrogated in Kuwait and then transferred to Iraq where they were detained in camps reserved by the Iraqi authorities for prisoners of war.

80. Among the camps reserved for prisoners of war were Al Rasheed camp in Baghdad, Baqouba camp and camps in Ramadi, Takriti and Mossul. Visits to these camps by the International Committee of the Red Cross (ICRC) were not allowed by the Iraqi authorities. According to reports of former detainees,

camp conditions were harsh, especially during the first weeks, because of lack of food and medical care. However, at least during the last months of 1990, prisoners of war were allowed visits by relatives and were consequently able to receive money and food from them.

(b) Detention of civilians and their deportation to Iraq during the time of the occupation

81. Between the second half of August 1990 and the middle of February 1991, large numbers of civilians were arrested and detained by the Iraqi occupying forces. Most of these persons were Kuwaiti citizens or stateless persons (bidoun), but they also included long-term residents of other Arab countries including persons of Palestinian origin, Egyptians, Jordanians, Saudis and Syrians.

82. Three categories of arrests can be distinguished:

(a) Persons arrested when intelligence and army personnel came to their homes looking for them. Such arrests were often carried out by members of Iraqi Intelligence (Muhabarat) together with army forces, sometimes involving large numbers of soldiers. Most of the arrested civilians interviewed by the Special Rapporteur reported being arrested under such conditions;

(b) Persons arrested at check-points set up by the Iraqi occupying forces or detained in public places after being identified as wanted persons;

(c) Persons arrested in systematic searches of houses in certain districts of Kuwait city or other towns, especially when leaflets, communication equipment or weapons were found.

Some of the arrests were described as "brutal" including that of a former Member of Parliament whose wife and sister were threatened with a bayonet and whose children and other relatives were mistreated.

83. The following reasons for these arrests were reported: (i) belonging to the Kuwaiti army and police forces or holding important posts in the Kuwaiti administration, (ii) being engaged in armed activities of the resistance, (iii) possessing arms or ammunition, or (iv) being involved in non-violent resistance, including expressing opposition to the invasion and occupation, often by writing graffiti, and by possessing and distributing tracts and leaflets. Sometimes, however, the motives for arrest were unclear; thus in the middle of September 1990, five doctors from the Kuwaiti Red Crescent Society were arrested and detained for more than three weeks without being accused of any of the above-mentioned acts.

84. In other cases persons who were relatives or friends of suspects reportedly were detained together with the suspect or in lieu of that person. In one of these cases, 20 males ranging in age from 15 to 50 were arrested when they entered the meeting room (diwaniyah) at the house of a common friend. In the case of the above-mentioned arrest of a former Member of Parliament, his son and nephew, aged 17 and 18 respectively, reported that they were arrested together with almost 20 other relatives and friends.

85. In most cases, detained persons were first brought to sites set up as detention centres, such as police stations, school buildings or abandoned houses taken over by the Iraqi occupying forces. As an analysis of interviews shows, they underwent there a first interrogation. Some were released after a few days, sometimes after they or their relatives paid bribes. Most were transferred to more permanent prisons and detention centres in Kuwait where interrogations continued. Interrogations focused on the activities either of the arrested persons or of their friends and relatives. Detainees were told to collaborate with the Iraqi occupying forces and to provide information. Often interrogations were accompanied by torture. Some detainees were then released, often after signing a pledge of allegiance to the Iraqi Government. In other cases it was reported that detainees were executed after having been tortured. Those who were neither released nor executed were normally deported to Iraq where they were transferred to large prisons or camps for detainees. A list of places of detention in Kuwait is annexed to the present report (annex I).

86. Interviewed persons consistently reported that those arrested did not have access to lawyers (for exceptions, see para. 135 below) and were not allowed to contact their families. Families looking for arrested relatives were normally not informed about their whereabouts, at least until their release was imminent.

87. Former detainees consistently reported poor conditions of detention, especially during the first days and weeks after the arrest. In many cases, poor conditions of detention continued in Iraq. Rooms were often overcrowded and detainees suffered from lack of food and water and from a lack of hygienic conditions, as well as adequate medical care.

(c) Mass arrests and deportations to Iraq after 19 February 1991

88. Persons apprehended during mass arrests carried out by Iraqi occupying forces in the period just before the retreat constituted a special category of arrested and deported civilians. These arrests started on 19 February 1991 and continued for several days. They were carried out at check-points or in front of mosques. Some of those apprehended were told the reason for their arrest and underwent interrogation; others were simply apprehended. Male Kuwaiti citizens of all ages, including elderly men, were reported to have been detained.

89. Most of these persons were deported to Iraq. Some remained in large camps in Basra until they were released and repatriated, others were transferred to different camps near Baghdad or in northern Iraq. Consistently, these former detainees mentioned harsh living conditions in overcrowded camps and reported having suffered from severe food deprivation, contaminated drinking water, unsanitary conditions and lack of proper medical care. There also were reports that these detainees were beaten and abused by guards.

(d) Detention and deportation of third-country nationals

90. Before 2 August 1991, more than 1.3 million non-Kuwaitis were residing in Kuwait, including more than 9,000 citizens of OECD countries. Persons belonging to this last category were ordered to report to the Iraqi authorities

on 16 August 1990. Subsequently, as has been extensively reported by governmental and non-governmental sources, they were deported to Iraq and obliged to remain there. Some were detained at strategic sites and thus used as "human shields", some among them until December 1990. At one point, according to British sources, 300 British citizens were held in Iraq. Among them was a hotelier who reported that he had been taken to Baghdad together with his wife and 19-year-old son. There he was immediately moved to a chemical factory where, together with a group of about 30 persons including a six-year-old and an eight-year-old girl, he was forced to spend almost five days in a room without daylight. Later, he was repeatedly taken back to that factory for periods of up to several weeks.

91. Other foreigners of Western origin hid in Kuwait or lived there under false identity. Some of them were arrested and maltreated as is illustrated by the case of a British instructor who reportedly was subjected, inter alia, to mock executions after he had been apprehended in January 1991.

92. A special situation was that of some of the diplomatic and consular staff present in Kuwait at the time of the invasion. Iraq, in violation of the relevant rules of international law, ordered all embassies closed until 24 August 1991. Members of diplomatic and consular missions of States supporting the coalition forces were confined to embassy compounds until 16 December 1990.

3. Assessment

93. Concerning the number of persons apprehended and detained in Kuwait the following quantitative assessment can be made:

(a) Prisoners of war: according to figures provided by ICRC to the Special Rapporteur, a total of 4,219 prisoners of war were registered and repatriated from Iraq to Kuwait between March and September 1991;

(b) Civilian detainees arrested during the time of the ongoing occupation: it was not possible for the Special Rapporteur to determine the number of these persons. ICRC registered and repatriated 935 civilian internees who were detained in Iraq in March 1991. The total number of persons arrested during the time of the ongoing occupation is, however, much higher than this figure indicates and might have reached several thousands, a substantial portion of whom were deported to Iraq. An unknown number of persons were only temporarily detained and released from detention sites both in Kuwait and Iraq before 26 February 1991. In this regard, it should be noted that reports concerning short-term detentions were numerous. These reports are corroborated by the fact that the number of detention sites throughout Kuwait during Iraqi occupation was extensive (see the list in annex I), allowing for waves of short-term detentions of large numbers of persons at any given time. There are also strong reasons to believe that many of the more than 2,000 persons still missing were arrested by Iraqi occupying forces and deported to Iraq (see paras. 156 and 157 below);

(c) Victims of the February 1991 mass arrests: 1,174 persons who most likely were arrested on 19 February 1991 and during the following days were, according to information provided to the Special Rapporteur by the

International Committee of the Red Cross, returned from Basra during an operation which was organized without the participation of ICRC on 7 March 1991. This figure does not account for all the victims of these mass arrests because, according to information from former detainees and other sources, an unknown number of persons returned on their own from detention sites in southern Iraq. Documents which were reportedly left behind by retreating Iraqi forces (see annex II, document 1) also indicate that the number of victims of the February 1991 mass arrests was higher than the number of those whose return was registered on 7 March 1991. The Special Rapporteur estimates that at least 2,000 Kuwaiti men were arrested on 19 February 1991 and during the following days and subsequently deported to Iraq;

(d) Several hundred third-country nationals, mainly from OECD countries, including women and children, were deported from Kuwait to Iraq and forced to stay there for several months. No specific statistics were made available to the Special Rapporteur.

94. Reports indicate that Iraq has violated provisions concerning the prohibition of arbitrary arrest, detention and deportation which are non-derogable even in times of armed conflict:

(a) Under the Third Geneva Convention, the Detaining Power is allowed to subject prisoners of war to internment and to transfer them as prisoners of war to its own territory for the purposes of providing adequate detention (art. 21). Thus the detention of members of the Kuwaiti armed forces in Iraqi camps was not prohibited. However, the treatment of such prisoners of war reportedly violated, in many cases, the obligations of the Convention regarding conditions of detention;

(b) The Fourth Geneva Convention, under certain restrictive conditions, entitles an Occupying Power to intern protected civilians. However, the mass, arbitrary or prolonged detention of civilians in many cases was not justified, even in terms of military necessity, particularly in the light of articles 41 to 43, 68 and 78 of the Fourth Convention. In a large majority of cases detentions were undertaken in total violation of the procedural rights set out in these articles. The deportation of civilians to Iraq violated the prohibition under article 48 of the Convention of the transfer and deportation of civilians from the occupied territory to the territory of the Occupying Power. The use of civilians from Western countries who had resided in Kuwait as human shields at strategic sites in Iraq constituted a violation of article 28;

(c) Confining diplomatic and consular staff to the compounds of their embassies not only violated the 1961 Vienna Convention on Dipomatic Relations and other relevant provisions of international law but also basic principles of human rights. The International Court of Justice held in a comparable context that "[w]rongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible ... with the fundamental principles enunciated in the Universal Declaration of Human Rights" (USA v. Iran, Merits, ICJ Reports 1980, para. 91).

B. Prohibition of torture and cruel, inhuman and degrading treatment

1. Legal framework

95. The prohibition of torture as embodied in article 5 of the 1948 Universal Declaration of Human Rights has become part of international customary law. Likewise, the prohibition of "mutilation, cruel treatment and torture" and of "outrages upon personal dignity, in particular humiliating and degrading treatment", as embodied in common article 3 of the Geneva Conventions, belong to those humanitarian principles which, as has been stated by the International Court of Justice, belong to general international law applicable in international as well as in non-international armed conflicts (see paras. 40 and 41 above).

96. In treaty law, article 7 of the International Covenant on Civil and Political Rights sets out that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". This provision is, according to article 4, paragraph 2, of the Covenant, among those articles from which even in time of public emergency no derogation can be made. In paragraph 2 of its general comment regarding article 7, the Human Rights Committee states:

> "[a]s appears from the terms of this article, the scope of protection required goes far beyond torture as normally understood. It may not be necessary to draw sharp distinctions between the various prohibited forms of treatment or punishment. These distinctions depend on the kind, purpose and severity of the particular treatment.... it is also the duty of public authorities to ensure protection by the law against such treatment even when committed by persons acting outside or without any official authority".

97. Prisoners of war are, in accordance with article 14, paragraph 1, of the Third Geneva Convention, entitled to respect for their person and their honour. Under article 13, acts seriously endangering the health of a prisoner of war, including physical mutilation or medical or scientific experiments, are regarded as a serious breach of that Convention; likewise, prisoners of war must at all times be protected from cruel, inhuman or degrading treatment, as well as against acts of violence or intimidation and against insults and public curiosity. Furthermore, articles 17 and 99 prohibit the use of torture or other forms of moral or physical coercion to secure from a prisoner of war "information of any kind whatever" when he is captured or to confess to a crime of which he is accused in a judicial proceeding. Article 87 states that "corporal punishments, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden"; article 89 provides that disciplinary punishment shall "in no case be inhuman, brutal or dangerous to the health of prisoners of war".

98. Civilian persons are protected against torture and cruel, inhuman and degrading treatment by several provisions of the Fourth Geneva Convention. Article 27 stipulates that protected persons are entitled, in all circumstances, to respect for their person and their honour. Article 32 sets out the basic rule that "taking any measure of such a character as to cause the physical suffering or extermination of protected persons" is prohibited

and that "this prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiment not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents". Article 31 prohibits "physical or moral coercion ... exercised against protected persons, in particular to obtain information from them or from third parties". In places of internment, the disciplinary regime "shall be consistent with humanitarian principles" (art. 100). Regarding penal and disciplinary sanctions, article 118 states that "[i]mprisonment in premises without daylight, and, in general, all forms of cruelty without exception are forbidden".

99. Persons not protected by these two Conventions benefit from the guarantees set forth in common article 3 prohibiting "mutilation, cruel treatment and torture" as well as "outrages upon personal dignity, in particular, humiliating and degrading treatment" and the corresponding fundamental guarantees of article 75 of the Additional Protocol I to the four Geneva Conventions as these two provisions embody customary law also applicable in times of armed conflict and occupation (see paras. 41-43 above).

2. Evaluation of the facts

100. The Special Rapporteur has received extensive information regarding torture and cruel, inhuman and degrading treatment by Iraqi occupying forces. In addition to reports received from international non-governmental organizations and the Farah report (S/22536), the following sources of information were available:

(a) Thirty-nine interviews by the Special Rapporteur with persons who reported having been victims of torture, with doctors who had seen or treated many such victims as well as with relatives of executed persons who saw traces of torture on the bodies of such individuals;

(b) Summary records of 117 interviews with victims of torture and cruel, inhuman and degrading treatment conducted by the Kuwaiti Association for the Defence of Victims of War. Some of these records contained a medical assessment of the case by medical doctors working on behalf of the Association; others included medical records and attestations from hospitals inside and outside Kuwait. In order to assess the accuracy of these records and the credibility of these statements, the Special Rapporteur conducted interviews with some of these persons;

(c) The results of a study of 100 detained persons repatriated from Iraq, and another study of 330 former detainees detained either in Kuwait or in Iraq (including short-term prisoners); both studies were conducted by Dr. Abdullah Al-Hammadi (Ibn Sina Hospital, Kuwait city);

(d) Photographic evidence which was corroborated by eyewitnesses or which was consistent with testimony provided by former detainees who had themselves been victims of torture.

(a) Patterns

101. Concerning the treatment of members of the Kuwaiti armed forces who were captured as prisoners of war at the time of the invasion, the Special Rapporteur received some reports indicating that at least some of these persons had been tortured either shortly after being captured or after they had been transferred to camps in Iraq. Among them was, for instance, a 31-year-old police investigator who was allegedly interrogated and tortured in Kuwait with electric shocks and falaqa (prolonged beating on the soles of the feet) after he had been captured by invading Iraqi forces; in Iraq he underwent further torture including being tied to the ceiling for almost two days and being forced to participate in Russian roulette. However, the available information does not indicate that incidents of this nature were systematic.

102. Most victims of torture were arrested during the period of the ongoing occupation (between the second half of August 1990 and the first half of February 1991). Of those tortured, most were suspected by Iraqi occupying forces of being members of the Kuwaiti resistance, although some persons were reportedly tortured because they had expressed their opinions, for example by distributing leaflets. Most of the reported cases followed the same pattern:

(a) After apprehension, these persons were normally brought to a police station or another building set up as a detention site. There, arrested persons underwent a first interrogation during which most of them were heavily beaten or even severely tortured;

(b) Then detainees were transferred to a prison or special interrogation centre in Kuwait where most of them underwent further interrogation.

Routinely, these interrogations were accompagnied by more heavy beatings or by severe torture over a period of several days or even weeks;

(c) Some detainees remained at these places for prolonged periods, some were released and others were taken to prisons and detention camps in Iraq. Especially for those who had not admitted their guilt or refused to give the information requested from them, torture reportedly continued even after deportation to Iraq.

103. Persons who were apprehended during the mass arrests starting on 19 February 1991 reported that they were beaten and suffered from poor conditions of detention. There were, however, only sporadic reports of interrogations accompanied by torture.

104. An analysis of the testimony of victims of torture indicates that torture served at least five different purposes: (i) to force detainees to admit their guilt; (ii) to obtain information, for example on members or on the activities of the resistance; (iii) to punish for past behaviour, (iv) to intimidate and terrorize individuals and their families, as well as the population, in order to prevent them from carrying out any acts of resistance; (v) to compel individuals to cooperate with the occupying forces (reportedly, most detainees had to sign a declaration expressing their willingness to do so).

105. While most victims of torture were men between 18 and 40 years old, elderly men were also reportedly tortured, as were women and allegedly even children. Several women who had suffered torture were interviewed during the Special Rapporteur's visit. Among them were two sisters, 18 and 19 years old, and their 16-year-old cousin, all of whom received, in September 1990, electro-shocks or were burnt with cigarettes. A 44-year-old businesswomen demonstrated cigarette burns on several parts of the body, bruises on her back, a swollen wrist and broken teeth. She also described having her nails pulled out and being forced to sit on a hot coffee warmer. Torture of women also had been witnessed by several men whilst they were in detention. The percentage of women and minors among victims of torture is difficult to determine. The following figures provide an indication. A list of victims of torture provided to the Special Rapporteur by the Kuwaiti Association for the Defence of Victims of War shows that 10 of the 106 persons (9.4 per cent) are female. A study by Dr. Al-Hammadi of 330 formerly detained persons, concluded that among the 261 persons who reported torture, 27 (10.3 per cent) were female and 7 were children.

(b) Methods

106. The methods of torture and cruel, inhuman or degrading treatment were manifold. The most common method was heavy beatings on all parts of the body including sensitive parts; instruments used included sticks, metal rods, clubs, whips, rifle butts and steel cables. In some cases beatings of this kind caused severe injuries. Often beatings included falaqa. According to two studies conducted by Dr. Al-Hammadi, beatings were reported by almost 90 per cent of those who said that they had been tortured. A statistical analysis undertaken by the Special Rapporteur of the 117 summary records of interviews with victims of torture and cruel, inhuman and degrading treatment conducted by the Kuwaiti Association confirmed this figure (87 per cent of the reports mention beatings).

107. Electro-shocks (the application of electricity to sensitive parts of the body, including ears, tongue, fingers, toes and genitals) were also reported to have been commonly used: 48 per cent of the victims of torture interviewed by the Kuwaiti Association for the Defence of Victims of War and 36 per cent of those who reported some form of ill-treatment in Dr. Al-Hammadi's study on 330 former detainees alleged that they had been victims of electro-shocks.

108. There were numerous accounts of psychological torture, including threats to torture or rape relatives, forcing persons to watch executions or torture including rape of other detainees or even of relatives, mock executions or threats of execution. Almost one third of those interviewed by the Kuwaiti Association for the Defence of Victims of War reportedly suffered serious forms of psychological torture.

109. Another frequent form of torture was suspending detainees, sometimes for prolonged periods, by the feet, the arms or the waist; often they were beaten while suspended. Among those interviewed by the Kuwaiti Association for the Defence of Victims of War 21 per cent reported this kind of torture and of victims of torture and ill-treatment in Dr. Al-Hammadi's study of 330 formerly detained persons 31 per cent.

110. The Special Rapporteur received evidence of cases of burning, normally with cigarettes but in some cases with boiling water or domestic appliances. Pulling out of nails was another form of torture repeatedly used.

111. Other methods used included sexual torture. Female detainees were raped and both men and women suffered from the insertion of bottle necks, sometimes broken. Because many victims of sexual torture were reluctant to reveal their experiences, no statistical figures are available.

112. Severe mutilations were less frequent; however, among those executed many bodies showed severe mutilations. According to photographic evidence, torturers resorted to gouging out eyes, cutting off ears or pouring acid onto the face or parts of the body.

(c) Locations

113. Torture took place at many locations in Kuwait, or in Iraq where persons apprehended by Iraqi occupying forces were brought. A list of reported places of detention and torture in Kuwait is annexed to this report (annex I).

114. These locations can be divided into the following categories:

(a) In Kuwait, persons apprehended by Iraqi occupying forces were normally first tortured at the local police station. Testimony of former detainees indicated that torture took place at most police stations in Kuwaiti towns and districts. Among them many cases of torture were reported from Sabah al Salem, Jahra, Hawalli, Farwaniya, Salmiya and Firdous police stations. Some schools, including Abdallah Mobarak and Abdallah Salem secondary schools, allegedly also served as detention and torture centres;

(b) Among the larger detention centres in Kuwait where apprehended persons were brought for systematic interrogation and torture were the Juvenile Prison (Sijn Al Adath) in Firdous, Nayef Palace (City Governorate - Muhafazat al 'Asima) in central Kuwait, Al Mashatel experimental farm in Rabiah and the building of the Iraqi Embassy.

(c) Persons deported to Iraq reported frequent cases of torture at the Basra State security prison, Abu Ghoraib camp and Samawah prison.

3. Assessment

115. It is not possible to determine the number of victims of torture and cruel, inhuman or degrading treatment. According to interviews conducted by the Special Rapporteur, the Farah mission and the Kuwaiti Association for the Defence of Victims of War, torture was widespread. An indication of the widespread use of torture was given by Dr. Al-Hammadi's two studies. Among the 100 former detainees repatriated from Iraq whose condition was analysed in the first study, 76 claimed to have been subjected to some kind of torture or cruel, inhuman or degrading treatment, and 261 out of 330 former detainees examined in the second study reported having been subjected to physical or psychological torture or abuse.

116. The available information shows a pattern of widespread violations by Iraqi occupying forces of, inter alia, article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights and the corresponding provisions of the Geneva Conventions pertaining to the prohibition of torture and cruel, inhuman and degrading treatment. Whereas torture of prisoners of war captured at the time of the invasion and of male Kuwaiti citizens apprehended during the mass arrests in February 1991 was less frequent, it can be concluded that torture and cruel, inhuman and degrading treatment were systematically used during interrogations of those arrested during the ongoing occupation. The most brutal forms of torture were reported in cases of persons suspected of belonging to the resistance.

117. In numerous cases, torture and inhuman, cruel or degrading treatment resulted in permanent physical or mental damage. Medical and psychiatric reports made available to the Special Rapporteur showed that former victims of torture still suffer from, inter alia, partial paralysis, pains, severe forms of depression, sleep disturbances and nightmares, severe anxiety, partial amnesia and inability to concentrate, often requiring medical and psychological care. The consequences of rape in the cultural context of Kuwait must also be highlighted.

C. Right to life and prohibition of arbitrary and summary execution

1. Applicable law

(a) International Covenant on Civil and Political Rights

118. Article 6 of the International Covenant on Civil and Political Rights sets out that "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life" (para. 1). Death sentences "may be imposed only for the most serious crimes" and they "can only be carried out pursuant to a final judgement rendered by a competent court" (para. 2).

119. Even in time of public emergency threatening the life of the nation, no derogation from these provisions is permitted (art. 4, para. 2, of the Covenant). This has, inter alia, two consequences:

(a) According to paragraph 3 of general comment 6/16 of the Human Rights Committee regarding article 6, the prohibition of arbitrary deprivation of life includes the obligation of States to "take measures ... to prevent arbitrary killing by their own security forces" (see CCPR/C/21/Rev.11);

(b) Even in times of emergency, the death penalty can only be carried out pursuant to a final judgement rendered by a competent court. Even if in such times a State sets up special courts for trying civilians, "trials by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stated in article 14" (general comment 13/21 regarding art. 14, para. 4, in document CCPR/C/21/Rev.11). Accordingly, it "follows from the express terms of article 6 that ... [the death penalty] can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right

to a fair hearing by an independant tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal" (general comment 6/16 regarding art. 6, para. 7, in document CCPR/C/21/Rev.1). These principles, because of their non-derogable character, also apply to persons not fully protected by the Geneva Conventions.

(b) The Geneva Conventions

120. In regard to "[p]ersons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause", common article 3 of the Geneva Conventions prohibits not only "violence to life and person, in particular murder of all kinds", but also "the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples". Although this provision, according to its wording, is applicable "[i]n the case of armed conflict not of an international character" it applies, as has been stated by the International Court of Justice, as a rule of international customary law, also to international conflicts, "[b]ecause the minimum rules applicable to international and non-international conflicts are identical" (Nicaragua v. United States of America, Merits, 1986 ICJ Reports, p. 114).

121. Under the Third Geneva Convention Relative to the Protection of Prisoners of War, the life of prisoners of war is protected in several regards:

(a) Article 13 prohibits "[a]ny unlawful act or omission by the Detaining Power causing death ... of a prisoner of war"; violations of this prohibition are "regarded as a serious breach of the present Convention" (para. 1). Reprisals against a prisoner of war are prohibited (para. 3).

(b) Prisoners of war can, in accordance with articles 99 to 101, be sentenced to death for an act prohibited at the time when it was committed by international law or the laws of the Detaining Power; however, such sentences are only admissible if the person concerned had "an opportunity to present his defence and the assistance of a qualified advocate or counsel" (art. 99, para. 3). The execution of a death sentence is to be delayed for "at least six months from the date when the Protecting Power receives ... the detailed communication provided for in Article 107" (art. 101).

122. Under the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, civilians enjoy the following guarantees regarding the right to life:

(a) Article 27, paragraph 1, sets out the rule that protected civilians "are entitled, in all circumstances, to respect for their persons ... They shall at all times be humanely treated, and shall be protected especially against all acts of violence ...". This includes the prohibition of acts endangering the life of individuals and thus also outlaws arbitrary and summary execution;

(b) Article 32 is more specific in prohibiting "any measure of such a character as to cause ... extermination of protected persons. This prohibition applies not only to murder ... but also to any other measures of brutality whether applied by civilian or military agents";

(c) Article 37 states that protected persons who are confined pending proceedings or serving a sentence involving loss of liberty, shall during their confinement be humanely treated. Thus, detained persons are safeguarded against arbitrary action and brutality; therefore, the Occupying Power must refrain from killing detainees and from any other actions which could cause the death of such persons;

(d) In accordance with article 68, protected persons who commit an offence which is solely intended to harm the occupying power cannot be punished by death unless they are "guilty of espionage, of serious acts of sabotage against the military installations of the Occupying Power or of intentional offences which have caused the death of one or more persons". Also, in such cases, the sentence can be pronounced only after a regular trial which has respected the principles of fair trial including the right to be informed of the particular charges, the right to defence and the right to appeal (arts. 71-73). Execution of a death sentence is to be delayed for "at least six months from the date of receipt by the Protecting Power of the notification of the final judgement confirming such death sentence, or of an order denying pardon or reprieve" (art. 75);

(e) Article 33 prohibits collective penalties and reprisals against protected persons. It also forbids all measures of intimidation or of terrorism. From this can be deduced a prohibition of public executions or public exposure of bodies of executed persons aimed at intimidating the population of an occupied territory.

123. Special rules apply to persons who were engaged in violent activities against the Occupying Power. They are not considered to be prisoners of war and therefore are not protected by the rules of the Third Geneva Convention if they do not belong to a resistance movement meeting the conditions of article 4-A, paragraph 2 (a)-(d) of that Convention (for example, not having a fixed distinctive sign recognizable at a distance or not carrying their arms openly). Such persons are civilians who, however, are not entitled to invoke the guarantees of the Fourth Geneva Convention if granting such rights and privileges would "be prejudicial to the security of such State"; nevertheless, "[in] each case, such persons shall ... be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention" (art. 5). Therefore, these persons are also protected by the procedural rules of articles 64 to 76. In addition, they enjoy the procedural guarantees set out in common article 3, which because of its customary law character is also binding upon States in international armed conflicts (see para. 40 above; concerning article 75 (4) of Additional Protocol I see para. 46 ... above).

2. Evaluation of the facts

124. According to information received, casualties were numerous when Kuwait exercised its inherent right of self-defence in accordance with article 51 of the Charter, as was explicitly recognized by the Security Council (see resolution 661 (1990). Regardless of the illegal character of the invasion and occupation of Kuwait by Iraq, casualties during combat and other armed actions carried out in accordance with the applicable principles of the laws of armed conflicts do not, according to present international law, amount to human rights violations as such.

125. The Special Rapporteur, however, received many reports of alleged violations of the right to life in situations hors de combat and in the context of detentions during the time of occupation. With the means available to the Special Rapporteur it was not possible to establish the exact number of cases of violation of the right to life and of the corresponding guarantees of the law of armed conflict. Nevertheless, the available information indicates the extent and the pattern of such violations.

(a) Arbitrary executions in the context of arrests and searches

126. The Special Rapporteur received some information concerning the arbitrary execution of prisoners of war. A Kuwaiti police investigator who participated in armed defence during the first days of the invasion and was captured together with two colleagues by Iraqi military forces after a shooting incident, reported that shortly after their apprehension one of them was shot in front of him by Iraqi army personnel when they refused to answer questions concerning their military activities. Such action is not only in contradiction to article 17 of the Third Geneva Convention, which does not allow the infliction of any form of coercion on prisoners of war to secure information, but also violates article 13 of that Convention. However, reports of this kind were infrequent and according to available information such actions were not systematic.

127. There were also some reports regarding arbitrary executions in the context of the arrest of civilians. A British citizen, who was hiding after the invasion, told the Special Rapporteur that on 29 September 1990 he had observed a Kuwaiti man being shot in the presence of his family by an Iraqi officer after his car had been stopped and searched in front of the Omar Khayyam Hotel in Salmiya. This account is consistent with reports by non-governmental organizations about several incidents of a similar nature which took place in the context of searches and arrests, particularly at checkpoints. Such incidents reportedly also happened at the time of mass arrests of Kuwaiti men beginning on 19 February 1991. A doctor from Farwania hospital reported that during that period her hospital received the bodies of persons who had been shot when trying to escape arrest.

(b) Summary executions during or after detention

128. Information received by the Special Rapporteur indicates that summary execution of civilians who had been arrested and detained in Kuwait by the Iraqi occupying forces became widespread and systematic after the initial phase of the invasion. This conclusion can be drawn from the following evidence:

(a) Interviews by the Special Rapporteur with doctors and other health personnel working for the Kuwaiti Red Crescent Society or for hospitals who saw or photographed such corpses;

(b) Interviews by the Special Rapporteur with persons who witnessed executions or saw the bodies of executed persons;

(c) Lists of persons reported to have been killed by their relatives and registered by the Kuwaiti National Committee for Following Up P.O.W. and Missing Affairs and the Kuwaiti Association for the Defence of Victims of War;

(d) 107 photographs in the possession of the Special Rapporteur which show the heads or the bodies of dead persons. These photographs reportedly were taken during the time of the occupation when dead bodies were found in public places or were brought to the hospitals; photographers included ambulance drivers, doctors and other health personnel working at hospitals or for the Kuwaiti Red Crescent Society.

129. Many of the summarily executed persons had reportedly been arrested by the Iraqi occupying forces; some time later their dead bodies were either delivered by the Iraqi occupying forces to one of the Kuwaiti hospitals or were found lying in the streets and other public places and were subsequently brought by residents of Kuwait to hospitals or to the offices of the Kuwaiti Red Crescent Society. An administrative assistant who was working at al-Razi hospital until November 1991 told the Special Rapporteur that many corpses of killed and often mutilated Kuwaitis arrived at that hospital; many of them were taken to morgues and to food freezers, some outside the hospital. This was confirmed by another health worker who worked at al-Razi during the same period. A doctor who worked at the Al-Sabah medical complex during the time of occupation said that he had seen many corpses which bore signs of torture. A surgeon from Mubarak hospital reported that, on one occasion, 70 dead bodies showing torture marks were brought to the hospital. All this information was consistent with reports received from hospitals by the Farah mission (document S/22536, para. 26).

130. In several other reported cases, persons who had been detained for some time were brought home and shot by Iraqi occupying forces in front of their families. A first wave of such executions started in September 1990 and lasted several weeks. Among the first reported victims was Captain Ahmed Kabazard, who was executed in front of his house in Jabriya on 16 September 1990 in the presence of members of his family. A 55-year-old woman from Bayan reported that her son had gone out and did not return home on 2 September 1990; six days later he was brought back by Iraqi soldiers and executed with two bullets. She also reported that her son's face had been burned during torture. The case of Dr. Hisham al-Obaydan, an obstetrician at the maternity hospital who was arrested and executed in front of his family and neighbours in October 1990, was widely reported. In another reported case, a 25-year-old army officer was executed in similar circumstances in Faiha on 23 September 1990; his body showed traces of torture. Executions in front of families also took place in January and February 1991. Among the cases reported to the Special Rapporteur are those of two employees of Kuwait International Hotel who died in this way on 5 February 1991 after they had been arrested on 13 January 1991.

131. Some detainees were allegedly arbitrarily executed during torture sessions. A 17-year-old student told the Special Rapporteur that during a torture session at Nayef palace, where he was detained during October 1991, he was forced to witness the execution of another detainee during a torture session. At a detention centre in Iraq a 31-year-old police investigator was forced to play Russian roulette with a friend, who died as a consequence.

132. The bodies of executed persons were often left on streets and in other public spaces. Illustrative of this are the cases of three blindfolded men who were shot in the head and whose bodies were seen lying on the street near a construction site in Shubhan for several days; the body of a women left on the street in Mishrif at the end of September; and four young men who were executed and their bodies left near the fourth ring road in Rawdah in February 1991.

133. Most persons who were executed were reportedly suspected to have been active members of the resistance. Such persons were especially at risk, regardless of their nationality. Executed persons also included medical personnel, for instance the administrative director of the Kuwait Cancer Control Centre, Abdelhamid Al Balhan, and another staff member, and Dr. Hisham al-Obaydan who, however, was an active member of the resistance and might have been executed mainly for that reason.

(c) The death penalty

134. The Special Rapporteur received some information regarding judicial procedures prior to execution or other punishment. A 25-year-old Kuwaiti diplomat was twice taken to what he described as a "committee court" consisting of three members who appeared to belong to the Baath Party. He was accused, inter alia, of supporting resistance and terrorist activities. Subsequently he was taken to a prison in Iraq where he was told that although he faced execution, President Saddam Hussein would be asked to commute his sentence. This person informed the Special Rapporteur of three other persons who received death sentences; one of them was allegedly taken to Kuwait and executed there. A 23-year-old Kuwaiti woman who had joined the resistance was also taken to Iraq and tried by what she called a "military court" for possession of resistance literature and arms; however, before the sentence was carried out, she was liberated during the uprisings after the end of the war.

135. In these and other cases of trials involving the death penalty, the procedural rights of the accused were allegedly curtailed. In one case, the accused was only allowed to answer questions asked by the court, but could not defend himself. In another case, an Iraqi defence counsel was present but never spoke. Both defendants had been tortured during the pre-trial period and they had neither the opportunity to present witnesses nor to appeal the conviction.

136. Another reported category of death sentences was constituted by those carried out on the basis of resolutions by Iraq's Revolutionary Command Council introducing the death penalty for the hoarding of food for commercial purposes (resolution No. 315 of 20th Muharram 1411 H./11 August 1990, published in Alwaqai Aliraqiya (the official gazette of the Republic of Iraq), vol. 33, No. 35, 29 August 1990, p. 3), for looting (theft) (resolution No. 322

of 23rd Muharram 1411 H./14 August 1990, published in Alwaqai Aliraqiya, vol. 33, No. 36, 5 September 1990, p. 3) and for "sheltering a foreigner, with a view to hiding him from authority" (resolution No. 341 of 3rd Safar 1411 H./24 August 1990, published in Alwaqai Aliraqiya vol. 33, No. 37, 12 September 1990, p. 3). Some executions for looting were reported by Iraqi television or newspapers. To what extent these death sentences were imposed after a fair trial cannot be assessed.

(d) Deaths occurring during detention in Iraq

137. Some reports indicate that on several occasions deaths in detention of prisoners of war or of deported civilians in Iraq were due to the conditions of detention or to maltreatment by guards. Thus, two civilians who had been deported to Iraq in late September 1990 and were detained at Basra saw the body of a man who had been beaten by a guard and suffered a fatal heart attack. Others reported that persons detained in Iraq had died because of the lack of proper medical assistance. The number of deaths in detention in Iraq cannot be determined because Iraq failed to register and report such cases (see para. 158 (c) below).

(e) Violations of the right to life in the context of repression of the freedom of expression

138. The right to life was also violated when citizens and residents of Kuwait peacefully expressed their political opinions. Such an incident was reported to have happened on 8 August 1990 near Mubarak hospital in Jabriyah when women who were demonstrating and chanting anti-Iraqi slogans were fired upon indiscriminately by Iraqi occupying forces. According to a surgeon at that hospital, who treated victims of the incident, two persons were killed and others, including children, sustained severe injuries.

139. According to reports of non-governmental organizations, several young men were arbitrarily executed when apprehended whilst writing or spraying anti-Iraqi slogans on walls. A man interviewed by the Special Rapporteur reported that he saw the bodies of two teenage boys lying on a street in Mishrif at the end of September 1990; reportedly they had been executed in front of their families for having painted anti-Iraqi graffiti.

3. Assessment

140. Reports and other information available to the Special Rapporteur demonstrate a pattern of deliberate and grave violations of the right to life as set out in article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights and the corresponding guarantees under the law of armed conflicts. Even taking into account that the loss of life during the occupation of Kuwait by Iraq was partially due to armed conflict, there is ample evidence of widespread arbitrary and summary executions. Persons were often executed after having been tortured. This often happened without trial. Where trials took place, they did not comply with the relevant fundamental guarantees of fair trial, including those applicable in times of war. Evidence indicates that executions in public or in front of families and the exposure of dead bodies in public were carried out for the purpose of spreading terror among the civilian

population. In other cases deaths were due to the general conditions in places of detention in both Kuwait and Iraq, including the behaviour of guards and lack of proper medical care.

141. On the basis of the information available to the Special Rapporteur, it was not possible to determine the exact number of persons who had been killed or executed in violation of the right to life under human rights law and the corresponding guarantees of the law of armed conflicts. In some cases, the specific circumstances leading to death could not be precisely determined; furthermore, in violation of its obligations under articles 101 and 107 of the Third and article 75 of the Fourth Geneva Convention, Iraq did not report the death sentences imposed on prisoners of war and detained civilians, nor did it issue death certificates for persons who died in detention as is required by articles 120 and 121 of the Third and articles 129, 130 and 131 of the Fourth Geneva Convention. For these same reasons it is impossible to determine how many of the persons still missing may have lost their lives while detained by the Iraqi occupying forces.

142. However, some evidence concerning the total number of citizens and residents of Kuwait who were killed during the occupation is now available, pending verification of the fate of the persons still missing. A list established by the Kuwaiti National Committee for Following Up P.O.W. and Missing Affairs contains 130 names and addresses of executed persons. The Kuwaiti Association for the Defence of Victims of War was informed by families of 81 persons reportedly executed; another 233 registered persons allegedly were killed in other circumstances. The Kuwaiti Social Solidarity Fund for the Welfare of Martyrs & P.O.W.s provided the Special Rapporteur with the names of 68 executed persons and of 272 persons killed in other circumstances whose cases had been registered by members of their families. In addition, the Special Rapporteur received 107 photographs of allegedly executed persons, most of whom have not so far been identified.

143. The Special Rapporteur concluded that hundreds of persons lost their lives as a consequence of executions and other actions of the Iraqi occupying forces inconsistent with the right to life protected by article 6 of the International Covenant on Civil and Political Rights and the corresponding guarantees under the law of armed conflict, including common article 3 of the four 1949 Geneva Conventions. This number may be considerably higher if it turns out that among the persons reported to have been arrested by Iraqi occupying forces who are still missing there are other victims of violations of the right to life whose cases have not yet become known.

D. Disappearances and missing persons

1. Legal framework

144. International practice and doctrine have categorized disappearances as a crime against humanity. The forced disappearance of human beings is a multiple and continuous violation of many rights, namely the right to liberty and security of the person, the prohibition on arbitrary arrest or imprisonment, the prohibition on cruel, inhuman or degrading treatment and of torture, and the right to life (Velásquez Rodríguez case, Organization of American States, Inter-American Court of Human Rights, Judgement

of 29 July 1988, Annual Report of the Inter-American Court of Human Rights 1988). These individual rights were recognized by the 1966 International Covenant on Civil and Political Rights as well as the Geneva Conventions of 1949 and several clauses in these instruments are thus relevant to the phenomenon of disappearance as related to the situation of human rights in Kuwait under Iraqi occupation.

145. Article 119, paragraph 7, of the Third Geneva Convention provides that by agreement between the Parties to the conflict, commissions shall be established for the purpose of searching for dispersed prisoners of war and of assuring their repatriation with the least possible delay. In the case of the death of a prisoner of war, article 120, paragraph 2, is potentially useful in clarifying cases of disappearance. It requires that death certificates or "lists certified by a responsible officer, of all persons who die as prisoners of war shall be forwarded as rapidly as possible to the Prisoner of War Information Bureau established in accordance with Article 122". Article 120, paragraph 2, also establishes that "[i]n order that graves may be always found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power". Under article 121, "[a]ny death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown", has to be communicated to the Protecting Power.

146. Article 133, paragraph 3, of the Fourth Geneva Convention stipulates that "by agreement between the Detaining Power and the Powers concerned, committees may be set up after the close of hostilities or after retreat from occupied territories, to search for dispersed internees". In regard to the registration of deaths, article 129, paragraph 2, requires that "[d]eaths of internees shall be certified in every case by a doctor, and a death certificate shall be issued, listing the causes of death and the conditions under which it occurred". Such records shall be transmitted without delay to the Protecting Power as well as to the Central Agency. Article 130, paragraph 3, establishes that "[a]s soon as circumstances permit, and not later than the close of hostilities, the Detaining Power shall forward lists of graves of deceased internees to the Powers on whom the deceased internees depended, through the Information Bureaux provided for in article 136". In accordance with article 131, "[e]very death or serious injury of an internee, caused or suspected to have been caused by a sentry, another internee, or any other person, as well as any death the cause of which is unknown", has to be communicated to the Protecting Power.

147. Article 33 of Additional Protocol I to the Geneva Conventions sets out the active requirement that each Party to the conflict search for the persons who have been reported missing by an adverse Party. Nevertheless, this provision is not included in the Geneva Conventions and thus does not apply to the situation of human rights in Kuwait under Iraqi occupation.

2. Evaluation of facts

(a) Figures

148. An original list of persons who were missing after the withdrawal of the Iraqi occupying forces was established in March 1991. It contained more than 11,700 names (see Farah report, document S/22536, para. 29). After large-scale repatriations of prisoners of war and civilian internees in late March and early April 1991 and the spontaneous reunion of families who had been separated during the time of the occupation, the number of missing persons decreased considerably. During his first visit in June 1991, the Special Rapporteur was informed that, as of June, more than 3,800 persons were still missing.

149. At a meeting convened during the Special Rapporteur's first visit by the Kuwaiti Ministry of Foreign Affairs and chaired by the dean of the diplomatic community, several ambassadors of Asian countries mentioned that large numbers of their citizens living in Kuwait at the time of the invasion were still missing. However, the Special Rapporteur was not provided with detailed and specific information on these cases.

150. During his second visit, the Special Rapporteur received from the Ministry of Justice a full computer printout, dated 5 August 1991, which was prepared by the Kuwaiti National Committee for Following Up P.O.W. and Missing Affairs. This list contained 2,472 cases of missing individuals, 1,835 of whom were Kuwaiti citizens, 442 stateless residents of Kuwait (bidoun) and 195 of other nationalities. The decrease in numbers between the list received in June (3,800 missing persons) and this list can only to a very limited extent be explained by the return or reappearance of formerly missing persons. The reduction is partially due to the fact that some duplicated names were omitted. The principal reason, however, is the fact that, according to information provided by representatives of the Ministry of Justice, approximately 1,000 individuals were omitted from the list because their cases were no longer considered to be of concern to the Government of Kuwait. These missing persons primarily comprise: (i) stateless residents of Kuwait (bidoun) who had not been employed by the Government of Kuwait (those who had constitute the 442 cases on the list of 5 August 1991), (ii) Jordanian citizens, including those of Palestinian origin, and (iii) other Palestinians. The number of missing persons might thus be much higher than the number on the list established by the Kuwaiti National Committee for Following Up P.O.W. and Missing Affairs.

151. In October 1991 the Special Rapporteur received a third version of the list of missing persons established by the Kuwaiti National Committee for Following Up P.O.W. and Missing Affairs. This list, dated 13 October 1991, is for reasons not known to the Special Rapporteur shorter than the previous lists. It contains the name, year of birth and nationality of 2,101 individuals. On this list were 1,583 Kuwaiti citizens, 354 stateless residents of Kuwait (bidoun), 2 nationals of the United Arab Emirates, 60 Saudis, 16 Syrians, 29 Egyptians, 1 Omani, 13 Lebanese, 1 Somali, 3 Bahrainis, 7 Filipinos, 13 Indians, 4 Pakistanis, 14 Iranians and 1 Sri Lankan.

152. Finally, it should be noted that between early April and 18 August 1991 ICRC registered in Iraq 3,506 civilians, civilian internees and prisoners of war who wished to return to Kuwait. Until September 1991, from among these persons, 41 prisoners of war, 53 civilian internees and 112 civilians were authorized by the Kuwaiti authorities to return. During his second visit to Kuwait, the Special Rapporteur was informed by representatives of the Kuwaiti Ministry of Justice that there was only negligible duplication of names on the list of 2,101 persons established by the Kuwaiti National Committee for Following Up P.O.W. and Missing Affairs and the list of 3,506 persons provided by ICRC. In commenting upon the list provided by ICRC, the representatives of the Ministry of Justice claimed that about 2,900 persons out of the 3,506 names belonged to families of stateless persons (bidoun) who voluntarily went to Iraq during the occupation because they had close ties to that country, and that only some of the other 600 persons on the list provided by ICRC might have been detained by Iraqi occupying forces.

(b) Evaluation of the list established by the Kuwaiti National Committee for Following Up P.O.W. and Missing Affairs

153. The list of 13 October 1991 containing the names of 2,101 missing persons was established by the Kuwaiti National Committee for Following Up P.O.W. and Missing Affairs on the basis of information provided by relatives. This registration started shortly after the Iraqi withdrawal from Kuwait and a special centre was set up for that purpose. During the Special Rapporteur's first visit to Kuwait, the registration was still proceeding and he visited the registration centre on several occasions. There he not only received information on the details of the registration procedure, for example, the requirement for relatives to provide some kind of evidence concerning the identity of the missing person, but he also witnessed how the registration was done and how the information was processed. There are therefore no indications that the list contains names of persons other than those actually registered by their relatives.

154. When relatives registered someone as missing they were in most cases asked the reasons why these persons did not return. Their answers were divided into four categories and these categories are reflected in the last digit of the registration number given for each individual. Digit "1" means that the persons had been registered as being killed, "2" designates those who were reported to have been arrested by Iraqi occupying forces, "3" denotes persons who were thought to have been outside Kuwait during the occupation or at the moment of the outbreak of armed conflict on 16 January 1991 and who had neither returned nor contacted their families up to the time of registration; digit "4" is used for all persons who disappeared for reasons unknown to their relatives; the same digit is used for some cases where the reasons for disappearance were not taken down when they were registered. Whereas former lists also included those reportedly dead, they are omitted from the list of 13 October 1991. This list contains 611 names belonging to category 2 (arrested), 400 belonging to category 3 (persons outside Kuwait during the occupation), and 1,088 names belonging to category 4.

155. The Special Rapporteur met several persons who knew of missing persons in their extended families or among their friends and neighbours. He conducted thorough interviews with some relatives of the 611 missing persons belonging

to category 2 (those reportedly arrested by Iraqi forces) who reported having witnessed the arrest or detention of their missing relatives by Iraqi occupying forces.

3. Assessment

156. There is no doubt that many persons are still missing in Kuwait. The question, however, arises whether all these persons are still, as has been claimed, detained in Iraq. It is unlikely that all or even most of the 400 persons belonging to category 3 on the list established by the Kuwaiti National Committee for Following Up P.O.W. and Missing Affairs (those who were reported to be abroad and blocked from re-entry into Kuwait at the time of the last contact with their families) were detained in Iraq. In addition, some of the 1,088 missing persons in category 4 (unknown circumstances of disappearance) may have been killed on Kuwaiti territory as a consequence of the invasion, of armed action by members of the Kuwaiti resistance during the occupation, of military conflict after 16 January 1991, or of the security problems in Kuwait city during the period after 26 February 1991 when, according to reports by Amnesty International and other non-governmental organizations, reprisal killings took place in the aftermath of the occupation.

157. However, according to information received, many of the missing persons were arrested and detained by the Iraqi occupying forces. The fate of these persons is very difficult to assess. It is possible that persons deported from Kuwait to Iraq are still detained. The Kuwaiti authorities informed the Special Rapporteur that they had submitted to ICRC approximatively 400 names of persons who allegedly had been seen in detention by prisoners of war and civilian internees repatriated from Iraq. On the other hand, the Special Rapporteur was also informed that the Kuwaiti National Committee for Following Up P.O.W. and Missing Affairs is in possession of approximately 100 photographs of unidentified persons who allegedly were killed by Iraqi occupying forces. (The Committee plans to open a centre where these photographs will be made available to families looking for missing relatives.)

158. In accordance with the applicable rules of international law, Iraq must account for those who were actually arrested by its forces. If Iraq were still to be holding prisoners of war and civilian internees, a premise the Iraqi authorities deny, several basic human rights embodied in the International Covenant on Civil and Political Rights would be violated. Iraq has failed:

(a) To inform families about the whereabouts of persons arrested in Kuwait or to give arrested persons the right to contact their families. An exception was made, however, for prisoners of war captured during the actual invasion who were allowed visits at the prisoner of war camps in Iraq;

(b) To provide information about death sentences imposed on prisoners of war and civilian detainees, as required by articles 101 and 107 of the Third and articles 74 and 75 of the Fourth Geneva Convention;

(c) to issue death certificates for deceased prisoners of war and civilian internees and to provide information about graves in accordance with articles 120 and 121 of the Third and articles 129, 130 and 131 of the Fourth Geneva Convention.

159. In resolution 46/135, adopted on 17 December 1991 (see annex III), the General Assembly invoked these articles when it requested the Government of Iraq:

> "4. to provide information on all Kuwaiti persons and third-country nationals deported from Kuwait between 2 August 1990 and 26 February 1991 who may still be detained and to release ... these persons without delay;
>
> 5. ... to provide ... detailed information on persons arrested in Kuwait between 2 August 1990 and 26 February 1991 who may have died during or after that period while in detention, as well as on the site of their graves;
>
> 6. ... to search for the persons still missing and to cooperate with international humanitarian organizations, such as the International Committee of the Red Cross, in this regard;
>
> 7. ... to cooperate and facilitate the work of international humanitarian organizations, notably the International Committee of the Red Cross, in their search for and eventual repatriation of Kuwaiti and third-country national detainees and missing persons".

E. Freedom to leave

1. Legal framework

160. The International Covenant on Civil and Political Rights provides, in article 12, paragraph 2, that "everyone shall be free to leave any country, including his own". Limitations to this right are, however, allowed on the basis of paragraph 3 of this article. In addition, derogations from this right are permitted by article 4 of the Covenant in times of public emergency.

161. Civilians are, however, protected by article 35, paragraph 1, of the Fourth Geneva Convention, which provides that "[a]ll protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interest of the State. The applications of such persons to leave shall be decided in accordance with regularly established procedures and the decision shall be taken as rapidly as possible". In accordance with article 35, paragraph 2, in cases of refusal, immediate review by a court or administrative board of persons is required.

2. Evaluation and assessment of the facts

162. After the invasion, Kuwaiti citizens were in principle not allowed to leave their country in order to go to Saudi Arabia. Reportedly, young men in particular were prevented from doing so. Later, Kuwaiti citizens met less resistance, which allowed large numbers to leave for Saudi Arabia. It has

been estimated that over two thirds of the overall population were forced into exile, thus reducing the population to approximatively 200,000-300,000 Kuwaiti citizens and 300,000-400,000 non-Kuwaitis (see Farah report, S/22536, para. 6).

163. Citizens of OECD States were not allowed to leave Kuwait freely but had to report to meeting places from where many were transferred to Iraq. There they had to stay until they were allowed to leave; some of those transferred from Kuwait were detained at strategic sites as "human shields" (see para. 90 above). On 16 December 1990, all foreigners were allowed, by presidential decree, to leave Kuwait and Iraq.

164. Citizens of Asian countries were in principle allowed to leave Kuwait through Iraq. Their repatriation, however, met with considerable logistical difficulties and caused severe hardship to many persons. Some allegedly died during these operations. The dean of the diplomatic corps in Kuwait reported to the Special Rapporteur that he had seen the bodies of several young Asian women who died of dehydration because they were not provided with sufficient water when travelling to Iraq by bus. According to his account, many of these persons were stripped of their valuables when leaving Baghdad airport.

165. In some cases, Iraq may have been justified in invoking national interests in the sense of article 35 of the Fourth Geneva Convention when not allowing Kuwaitis to leave their country, but the Special Rapporteur was informed that it did not institute any legal proceedings, as required by that article. The transfer of nationals of third countries, mainly citizens of OECD countries, to Iraq and the reported detention of some of them as "human shields" violated several guarantees of international law. Finally, the treatment of citizens of Asian countries was in contradiction to basic principles of respect for the person.

F. Freedom of religion, of expression, of assembly

1. Legal framework

166. The International Covenant on Civil and Political Rights guarantees freedom of thought, conscience and religion (art. 18), freedom of expression (art. 19) and the right to peaceful assembly (art. 21). According to article 4 of the Covenant, freedom of thought, conscience and religion as embodied in article 18 is, unlike the guarantees under articles 19 and 21, non-derogable even in times of public emergency, including the "freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching".

167. Article 34 of the Third Geneva Convention provides that "prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities".

168. Article 27, paragraph 1, of the Fourth Geneva Convention stipulates that "[p]rotected persons are entitled, in all circumstances, to respect for ... their religions convictions and practices". Paragraph 4 of the same article, however, contains a restrictive clause to the effect that "Parties to the

conflict may take such measures of control and security [regarding the above-stated rights] in regard to protected persons as may be necessary as a result of war".

169. This restriction of the Fourth Convention and the allowable derogation from the Covenant notwithstanding, the exercise of the freedoms to manifest one's religion, of expression or assembly may never give rise, even in times of armed conflicts, to control by means of arbitrary arrest, torture, cruel, degrading or inhuman treatment or summary or arbitrary execution.

2. Evaluation and assessment of the facts

(a) Freedom of expression and assembly

170. Evidence indicates that assemblies and expression of opinions considered to be hostile by the Iraqi occupying forces were not tolerated during the time of the occupation (see also annex II, document 2). Persons arrested for distribution of pamphlets and other information were, at least in some cases, reportedly tortured. In this regard, Dr. Hammadi's pilot study on 100 ex-detainees repatriated from Iraq notes that 12 of them had been tortured for distribution of pamphlets and other information. Others were killed or executed, allegedly without proper trials. While derogations from the freedoms of expression and assembly (arts. 19 and 21 of the International Covenant on Civil and Political Rights) are admissible in times of public emergency, the measures taken by Iraqi occupying forces to limit these guarantees were prohibited by the right to life and the prohibitions of torture and arbitrary arrest as embodied in the International Covenant on Civil and Political Rights and the corresponding guarantees of the Geneva Conventions.

(b) Freedom of religion

171. Religious activities as such were not prohibited by the Iraqi occupying forces and there was no systematic persecution of persons on account of their religious beliefs. However, the Special Rapporteur received allegations that religious leaders or persons on their way to mosques were often harassed and intimidated. Some mosques were searched and pillaged. A few mosques were destroyed, among them a mosque in Abdali, the ruins of which were shown to the Special Rapporteur during his second visit. Religious institutions like the Centre for Islamic Medicine, the Faculty of Islamic Law (Shariah) and several libraries containing religious books and manuscripts were reportedly looted and their contents taken to Iraq.

172. Some religious leaders allegedly were the victims of arbitrary arrest, torture and execution because their religiously motivated activities were considered hostile by the Iraqi occupying forces. In this regard, the Special Rapporteur was informed about the executions of mullah Salah Mohammed al Rifaa'i of Al Bukhari mosque, of Mahmoud Khalifa al Jasim, a religious author, and of Yussif Kather al Suri, a religious worker; however, it was also reported that all of them had opposed the occupation.

G. Special protection of women and children

1. Legal framework

173. Article 24 of the International Covenant on Civil and Political Rights provides that "every child shall have ... the right to such measures of protection as are required by his status as a minor on the part of his family, society and the State". Under article 6 of the Covenant, which is non-derogable in time of emergency (art. 4), death sentences "shall not be imposed for crimes committed by persons below eighteen years of age".

174. Under article 14 of the Fourth Geneva Convention "children under fifteen, expectant mothers and mothers of children under seven" are to be protected from the effects of war. Article 68 forbids the death penalty from being pronounced against a civilian who was under 18 years of age at the time of the offence. Article 76 states that "women shall be confined in separate quarters" and that minors under detention must be afforded special treatment.

175. Article 27 of the Fourth Convention provides that women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

2. Evaluation and assessment of the facts

(a) Children and minors

176. Children and minors under the age of 18 were also the victims of human rights violations committed by the Iraqi occupying forces. Teenagers were arrested and sometimes deported to Iraq, and younger children were detained together with their mothers, at least for short periods. Among the reported cases were those of a 13-year-old girl and a 9-year-old boy who were interviewed together with their mothers. The names of 115 children who are less than 12 years old are on the list of missing persons established by the Kuwaiti National Committee for Following Up P.O.W. and Missing Affairs.

177. Some minors were allegedly tortured. A 17-year-old student who was arrested together with another student wanted by the Iraqi authorities was repeatedly beaten (including falaqa) and burned with cigarettes over a period of one month; he reported having been forced to witness the torture of others, as well as an execution. A 16-year-old girl who was arrested together with her older sisters, reportedly was beaten, received electro-shocks and was burned with a hot iron rod. A list of 106 victims of torture established by the Kuwaiti National Committee for Following Up P.O.W. and Missing Affairs contains the names of eight persons who, in 1990, were less than 18 years old.

178. Other minors were allegedly executed, especially because they had sprayed anti-Iraqi slogans on walls during the first few weeks after the invasion (see para. 138 above). A list of persons killed established by the Kuwaiti Association for the Defence of Victims of War contains the names of three minors who reportedly were executed because of resistance activities. (Concerning babies and children who died because of lack of medical treatment, see paras. 198 and 199 below.)

179. Numerous children suffered from witnessing traumatic events related to human rights violations. A preliminary study conducted by a UNICEF mission to Kuwait which took place from 1 to 4 March 1991 found that 62 per cent of children interviewed reported such experiences, particularly having seen bodies hanging from lamp-posts or lying in the streets or having witnessed the arrest of close relatives (report by Dr. James Garbarino, "Mental health issues for children in Kuwait", 6 March 1991). Because of the long-term psychological effects of such experiences, UNICEF, in collaboration with the Kuwaiti Ministry of Health, is planning a programme for the rehabilitation of such children.

180. It can be concluded that a considerable number of children and minors were the victims of serious human rights violations committed by the Iraqi occupying forces. In addition, many children suffered from "measures of intimidation or of terrorism" directed against the civilian population, as prohibited by article 33 of the Fourth Geneva Convention.

(b) Women

181. Among those detained, deported, tortured and arbitrarily or summarily executed were, as has already been shown in this report, considerable numbers of women (see para. 105 above concerning torture).

182. In addition, women particularly were victims of rape. According to the information received and interviews conducted during the Special Rapporteur's visits to Kuwait, the following categories of cases of rape can be distinguished:

(a) Rape of foreign women by Iraqi soldiers during the first two weeks of the occupation. Most, but not all, of the victims were young women of Asian origin. The rape of 14 Thai women whose cases were investigated by the Embassy of Thailand was reported to the Special Rapporteur by members of the diplomatic community present in Kuwait at the time of the occupation. Reportedly, foreign women, including women of Asian, Egyptian or Jordanian origin, were allegedly raped at the nurses' hostel at Al Sabah medical complex.

(b) Rape of women during house searches by Iraqi army personnel, sometimes in front of close relatives. The case of a 55-year-old woman and her two daughters who were raped on such an occasion and subsequently went to the maternity hospital was reported to the Special Rapporteur by two doctors who had attended them. Another doctor from Mubarak hospital treated two victims, one of whom had been raped by two soldiers and an officer in front of the family;

(c) Other women were reportedly raped when abducted for that purpose from check-points or from the street;

(d) Finally, rape was used as a method of torture. Some male detainees also reported that during torture sessions they were forced to watch women being raped by Iraqi military personnel.

183. For several reasons, including cultural ones, the number of rapes could not be determined. However, information provided indicates that rape did not occur as an isolated incident. One gynaecologist at the maternity hospital reported treating approximatively 12 rape cases during the occupation and 65 after the liberation. Other sources said that "numerous" women reported to doctors that they had been raped by Iraqis.

184. Rapes committed by members of the Iraqi occupying forces during the exercise of their official functions, especially in the context of house searches or interrogations in detention, can be considered to constitute torture and cruel, inhuman or degrading treatment. In cases of rape committed by members of the Iraqi armed forces off duty, Iraq may have violated its obligation, under article 27 of the Fourth Geneva Convention, to protect women "against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault".

V. SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND THEIR PROTECTION UNDER THE LAWS OF ARMED CONFLICT IN KUWAIT UNDER THE IRAQI OCCUPATION

A. The right to enjoy the highest attainable standard of health

1. Legal framework

185. Article 12 of the International Covenant on Economic, Social and Cultural Rights sets out the general rule that "the States parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Obligations include "(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; ... (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness".

186. Article 29 of the Third Geneva Convention provides that the Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of prisoner of war camps and to prevent epidemics.

187. Article 55 of the Fourth Geneva Convention sets out the general rule that "[t]o the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the ... medical supplies of the population"; in addition, the Occupying Power "may not requisition ... medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account".

188. The Fourth Geneva Convention prohibits the destruction by the Occupying Power of health services existing in the territory of the occupied State. Thus in accordance with article 56, the Occupying Power has, "[t]o the fullest extent of the means available to it, ... the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory ... Medical personnel of all categories shall be allowed to carry out their duties". Article 57 provides that "the Occupying Power may requisition civilian hospitals only temporarily and only in cases of urgent necessity for the care of military wounded and sick, and then on condition that suitable arrangements are made in due time for the care and treatment of the patients and for the needs of the civilian population for hospital accommodation". This article makes clear that military necessity for medical facilities and material may never supersede the medical needs of the civilian population to that population's detriment.

2. Evaluation of the facts

189. The Special Rapporteur received extensive allegations that the level of health care in Kuwait, which used to be comparable to that of the most highly industrialized countries, was severely reduced as a consequence of the occupation of Kuwait by the Iraqi occupying forces. This reduction was caused by:

(i) The departure of large numbers of health professionals, especially of nurses and doctors;

(ii) The closing, dismantling and pillaging of health facilities;

(iii) Denial of access to hospitals.

(a) Intimidation of health professionals

190. The invasion and occupation of Kuwait caused the departure of large numbers of health professionals, most of whom were foreign nationals. According to a report by the World Health Organization (WHO), the number of health professionals shrunk to about 20 per cent of its previous level (WHO, Emergency Plan of Action, April-June 1991, Kuwait, 3 April 1991, Executive summary, p. 1).

191. Whereas some of these persons left Kuwait voluntarily, intimidation of medical personnel by Iraqi occupying forces allegedly contributed considerably to the reduction of staff. Nurses in particular were threatened and it was reported that a large numbers of Asian nurses left after several nurses had been raped by Iraqi forces (for the incident at the nurses' hostel at the Al-Sabah medical complex, see para. 182 (a) above). One doctor from the Cancer Centre at the Al-Sabah medical complex was allegedly summarily executed by the Iraqi military. The Special Rapporteur was informed that after this incident more than 50 per cent of the remaining staff left. One foreign-national medical worker from the Ibn Sina hospital reportedly remains missing. Another staff member was allegedly shot and rendered paraplegic. Nine staff members from this same hospital were allegedly detained, including one Palestinian who was reportedly severely tortured for two days before being released. The Special Rapporteur was also informed that at Mubarak hospital the arrest of three nurses in early October 1990 and their detention for three days because they had demonstrated against the occupation, led to a heavy loss of nurses. Out of 538 nurses working at this hospital at the time of the invasion on 2 August 1990 only about 100 remained in November; by January 1991, the number had gone down to approximately 70.

(b) Closing, dismantling and pillaging of health facilities

192. Before the invasion of Kuwait by Iraqi forces, six regional and nine specialized hospitals, as well as 72 health centres were operating throughout the country. According to a WHO report, at the end of the occupation all health centres were closed except 11 which were working with reduced staff. The hospitals operated at 10 to 20 per cent of their original capacity; one regional hospital was closed due to a shortage of nursing personnel and lack of electricity and water (WHO, Emergency Plan of Action, April-June 1991, Kuwait, 3 April 1991, p. 1).

193. Some health services were dismantled and technical equipment was transferred to Iraq by order of the Iraqi authorities (see also annex II, document 3). The organ transplant centre (visited by the Special Rapporteur) was pillaged. The gastroenterology centre was also pillaged and, in addition, a large number of dental chairs and ambulances were transferred to Iraq (WHO, Emergency Plan of Action, April-June 1991, Kuwait, 3 April 1991, p. 2).

(c) Denial of access to hospitals

194. Access to the still operating health-care services was not systematically denied by the Iraqi occupying forces. However, several restrictions made access difficult, at least for some persons. The Special Rapporteur was informed that in the autumn of 1990, when the population of Kuwait was ordered to exchange Kuwaiti identity documents for Iraqi documents, access to medical facilities was denied for several days to persons who refused to comply with these orders. Restrictions on prescription drugs imposed by Iraqi orders made access to these drugs difficult if not impossible for many chronic-care patients.

195. Curfew hours also limited access to medical facilities, as did a generalized fear of transiting the city. There were allegations that ambulance drivers were repeatedly harassed and shot at during curfew hours.

196. Selectivity in who received treatment was reported. It was alleged that medical staff were forced to treat members of the Iraqi armed forces and were prohibited from treating Kuwaiti soldiers or members of the Kuwaiti resistance.

(d) Consequences

197. The departure of doctors and nurses, the removal of equipment and the repeated cutting off of supplies and electrical power caused a deterioration in sanitary conditions and a reduction in nutritional care. These were indicated as main contributing factors to deaths, particularly for infants, the aged and mentally or physically handicapped patients.

198. According to statistics made available to the Special Rapporteur, death rates increased considerably for patients from 0 to 50 years. Infection, dehydration and uncontrolled diabetes and hypertension were the leading causes of death in several previously modern, well-equipped hospitals including the Maternity, Al Razi, Ibn Sina, Al Farwania hospitals and the Psychiatric and the Social Rehabilitation Centre.

199. In reports published during the time of the ongoing occupation, allegations were made that members of the Iraqi occupying forces had killed premature babies by taking them out of incubators. In regard to incubator-infant mortality, reports received by the Special Rapporteur during his visits to Kuwait indicated that between 75 and 125 infants, most of whom were born at Al-Sabah hospital, died during the month of September 1991 and were buried at Al-Riqqa cemetery. However, the Special Rapporteur received conflicting information concerning the causes of these deaths. There were some allegations that members of the Iraqi occupying forces had removed at least some of these babies from incubators. However, the Special Rapporteur was not able to interview any eyewitnesses. Claims were made that the Iraqi occupying forces had ordered the closing of one of two wards containing incubators at the maternity hospital and that the incubators were taken away, but later brought back. According to other information, the deaths of premature infants were mainly due to lack of staff and the repeated cutting off of water and electricity, which made it impossible to provide the premature babies with proper intensive care. The divergence of information provided to the

Special Rapporteur does not allow any final conclusions to be drawn concerning the deaths of these infants. An exhumation and autopsy of their bodies by a forensic team might make it possible to clarify their fate.

3. Assessment

200. It can be concluded from the available information that the right of everyone to enjoy the highest attainable standard of health, as guaranteed by article 12 of the International Covenant on Economic, Social and Cultural Rights and the corresponding guarantees of the Fourth Geneva Convention, particularly articles 55 and 56, were seriously curtailed by the Iraqi occupying forces and the Iraqi authorities, even if it is taken into account that less medical care was needed during the time of the occupation because large numbers of the population had left Kuwait.

4. Environmental damage

201. Concern was expressed during the visits of the Special Rapporteur to Kuwait, that the environmental consequences of burning oilfields and polluted seawater might have serious long-term consequences for the health of the population of Kuwait, including that of future generations.

202. Warfare on the territory of Kuwait resulted in substantial and large-scale environmental damage. After 16 January 1991 large quantities of crude oil were spilled into the Gulf, heavily polluting the water and the coastline. According to figures provided by the Kuwaiti authorities, 613 oil-wells were set on fire, 76 were gushing and 99 were otherwise damaged (Kuwaiti Environment Protection Council, State of the Environment Report, November 1991, p. 1). Smoke emissions seriously affected large areas in the Gulf region and beyond.

203. The Special Rapporteur examined the case of burning oilwells. He concluded that environmental damage from burning oil-wells was deliberately caused by the Iraqi occupying forces. The Special Rapporteur received documents left behind in Kuwait by the retreating Iraqi occupying forces which demonstrate that this destruction throughout Kuwait was intentional, premeditated and systematic on the part of the Iraqi forces. Directives were issued by the high command for the complete demolition of the wells by explosive devices (see annex II, document 4).

204. The Special Rapporteur was informed by doctors in Kuwait that after February 1991 there had been a certain increase of health problems, especially of children, elderly or sick persons, which might be attributed to environmental pollution caused by burning oil-wells. Such problems were described as "limited", although the increase of cases of respiratory problems was substantial (at Adnan Hopital, 28.3 per cent of all cases related to respiratory problems between 1 March and 25 September 1991; in 1986 the relevant figure was 15.9 per cent: see Kuwaiti Environment Protection Council, State of the Environment Report, November 1991, p. 24, fig. 25-A). Fears were expressed, however, that serious health consequences, mainly the problem of cancer caused by pollutants, could emerge in the long term.

205. In the present report, these damages may only be assessed on the basis of their effects on human rights because article 35, paragraph 3, and article 55 of the Additional Protocol I to the Geneva Conventions, prohibiting "methods or means of warfare which are intended, or may be expected, to cause" damage to the natural environment which is "widespread, long-term and severe", cannot, at this time, be said to be customary in nature and applicable to the Kuwaiti situation, inasmuch as Iraq is not a party to the Additional Protocol I. The same is true for the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of 1976, which obliges parties not to engage in t military use of environmental modification techniques (i.e. deliberate manipulations of natural processes) having widespread, long-lasting, or severe effects as a means of destruction, damage or injury to other parties.

206. In international human rights law, the right to a clean environment has not yet become part of international treaty or customary law. However, at least some fundamental aspects of such a right are evolving. According to principle 1 of the Declaration of the United Nations Conference on the Human Environment, adopted on 16 June 1972 "man has a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being ...". In its resolution 45/94, adopted on 14 December 1990, the General Assembly recognized that "all individuals are entitled to live in an environment adequate for their health and well-being".

207. As indicated in General Assembly resolution 45/94, there is a close link between the right to a clean environment and the right to enjoy the highest attainable standard of health. Whereas article 12 of the International Covenant on Economic, Social and Cultural Rights "does not explicitly recognize a right to environmental well-being as such, it is clear that the right to health encompasses the right to a safe and healthy environment" (United Nations Centre for Human Rights, Manual on Human Rights Reporting, New York, 1991, p. 65). Thus, the Committee on Economic, Social and Cultural Rights consistently seeks information on this subject from States parties which present their reports in accordance with article 16 of the Covenant.

208. Warfare often affects the natural environment; such consequences do not, per se, constitute human rights violations. However, in the light of the above-mentioned positions of the General Assembly and the Committee on Economic, Social and Cultural Rights, it can be concluded that not only in peacetime but also in times of armed conflict, the deliberate causing of large-scale environmental damage which severely affects the health of a considerable proportion of the population concerned, or creates risks for the health of future generations, amounts to a serious violation of the right to the enjoyment of the highest attainable standard of health as embodied in article 12 of the International Covenant on Economic, Social and Cultural Rights. However, because of the limited short-term consequences for the health of the civilian population and of the difficulties in determining the long-term impact on the health situation, it is too early to assess whether the destruction of oil-wells by the Iraqi occupying forces amounted to a violation of the right embodied in this article. Such behaviour, however, contradicted basic tenets of the duty of the Occupying Power to ensure and maintain public health and hygiene as it is embodied in article 56 of the Fourth Geneva Convention.

209. Because of its deliberate, premeditated and large-scale character, environmental damage caused by the Iraqi occupying forces also contradicted "the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience" (art. 158, para. 4 of the Fourth Geneva Convention). The Martens clause (see para. 35 above) must be observed at all times and without exception.

B. The right to education and to enjoy scientific progress

1. Legal framework

210. Article 13, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights stipulates that the States parties to the Covenant recognize the right of everyone to education.

211. Article 15, paragraph 1, of the Covenant establishes the right of everyone "to take part in cultural life", "to enjoy the benefits of scientific progress and its applications", as well as "to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author". In accordance with paragraph 2 of the same article, steps to be taken to achieve the full realization of this right "shall include those necessary for the conservation, the development and the diffusion of science and culture".

212. In accordance with article 50 of the Fourth Geneva Convention, the "Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children".

2. Evaluation of the facts

(a) Destruction of educational and scientific institutions

213. The Special Rapporteur observed evidence of and heard eyewitness accounts regarding the systematic dismantling and destruction of the major educational, scientific and cultural institutions in Kuwait by the Iraqi forces. He visited the Faculties of Law and of Art at Kuwait University where classrooms and offices were pillaged. Equipment and furniture, as well as whole libraries, were reportedly transferred to Iraq. Other material was destroyed and left on site.

214. The Kuwait Institute for Scientific Research (KISR) (visited by the Special Rapporteur) was systematically dismantled and destroyed. No applied research will allegedly be possible for a number of years. It was alleged that the dismantling and transfer of equipment to Iraq was organized by Iraqi researchers who had previously trained at the Institute, thereby gaining the technological and scientific knowledge necessary to carry this out without destruction of the material.

215. Evidence indicates that the dismantling, pillaging and destruction of these and other educational institutions, including several primary and secondary schools, was intentional and systematic. In this regard, the Special Rapporteur took note of a UNESCO report prepared in May 1991 by

Professor Iba Der Thiam, Special Representative of the Director-General of UNESCO, describing in detail the systematic character of the damage done to educational and research institutions in Kuwait. The Special Rapporteur was informed that the transfer of equipment, furniture, appliances, libraries, etc. was often based on written orders issued by the Iraqi Ministry of Education and carried out by specialists.

(b) Enjoyment of benefits

216. At Kuwait University archives containing material for doctoral dissertations and results of research were reportedly destroyed. Research and laboratory findings in all departments at the Kuwait Institute for Scientific Research were stolen or destroyed. It was further reported that more than 20 years of data from the experimental fisheries was destroyed, as well as all fish-harvesting tanks, data on the effects of petroleum pollution on marine life, agricultural studies and studies on engineering and water resources. Other research not easily reproduced was also taken, allegedly setting important research back many years.

(c) Protection of scientific production

217. Most of the raw data from individual or group researchers at KISR, constituting a significant body of intellectual property, was reportedly stolen and taken to Iraq. The Special Rapporteur received reports of concern that this material would be reproduced and copyrighted under others' names.

3. Assessment

218. On the basis of the information available it can be concluded that the right to education and to enjoy scientific progress as embodied in articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights and the corresponding guarantees of article 50 of the Fourth Geneva Convention were systematically violated, primarily through the dismantling, pillaging and destruction of educational and research institutions.

C. The right to food

1. Legal framework

219. Article 11 of the International Covenant on Economic, Social and Cultural Rights recognizes "the right of everyone to ... adequate food" (para. 1) and "the fundamental right of everyone to be free from hunger" (para. 2).

220. Article 26 of the Third Geneva Convention obligates the Detaining Power to provide sufficient daily food rations to prisoners of war. Article 55 of the Fourth Geneva Convention states that "[t]o the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food ... supplies of the population".

2. Evaluation of facts and assessment

221. The nutritional situation in Kuwait during the Iraqi ocupation, in general, did not, according to several sources, give rise to major concerns. This was partially due to the existence of neighbourhood cooperatives which were able to provide food to Kuwaitis. There were allegations that reprisals were taken by the Iraqi occupying forces against some persons working on behalf of such cooperatives. Information available to the Special Rapporteur, however, does not allow for the conclusion that such actions were taken with the aim of stopping the distribution of food; rather, according to reports, members of these cooperatives were suspected of being engaged in resistance activities.

222. One incident, which amounted to a violation of the right to adequate food as embodied in article 11 of the International Covenant on Economic, Social and Cultural Rights was reported to the Special Rapporteur by members of the diplomatic community. When approximatively 22,000 persons sought the safety and assistance of the Embassy of the Philippines in August 1990, the Iraqi authorities prohibited the supply of food to these persons. It was only by disregarding this prohibition that food could be brought to the premises of the Embassy.

223. Many persons who were deported to Iraq and detained there reported having suffered from a lack of food. These reports were corroborated by the pilot study conducted by Dr. Abdullah Al-Hammadi from Ibn Sina hospital on 100 former detainees repatriated from Iraq. The study found that 20 per cent of these persons had lost more than 20 kg in weight. Even taking into account difficulties related to the situation of Iraq after 2 August 1990, these findings indicated that the obligation under article 26 of the Third Geneva Convention to provide detainees with daily food rations sufficient "to keep prisoners of war in good health and to prevent loss of weight" was repeatedly not observed.

D. Prohibition of the destruction, dismantling and pillaging of infrastructure and private property

1. Legal framework

224. Article 16, paragraph 2, of the Fourth Geneva Convention obliges States parties, inter alia, to protect "persons exposed to grave danger" against pillage. Article 33, paragraph 2, contains a general prohibition on pillaging, and in paragraph 3, "[r]eprisals against protected persons and their property are prohibited". Article 53 prohibits "[a]ny destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations"; such destruction is only admissible where it "is rendered absolutely necessary by military operations".

2. Evaluation of the facts

225. The Special Rapporteur received much information on the destruction, dismantling and pillaging of infrastructure and of public and private property. Further information especially on the destruction of the infrastructure of Kuwait and of public and private property was gathered by the Farah mission (see its report on the scope and nature of the damage inflicted on Kuwait's infrastructure during the occupation, contained in document S/22535). This information may be summarized as follows.

226. Written orders were given by the highest Iraqi authorities to confiscate and transfer to Iraq all movable and immovable property belonging to members of the Al-Sabah family (Revolutionary Command Council Resolution 326 of 27th Muharram, 1411 H./18 August 1990, published in Alwaqai Aliraqiya (The official gazette of the Republic of Iraq), vol. 33, No. 37, 12 September 1990; Revolutionary Command Council Resolution No. 395 of 9 October 1990, published in Alwaqai Aliraqiya vol. 33, No. 50, 12 December 1990). Several palaces and houses belonging to members of the Al-Sabah family were pillaged and destroyed.

227. Certain Kuwaiti establishments, such as Kuwaiti Airways, the Kuwaiti Central Bank and the Kuwaiti General Transport Company, were dissolved and their property confiscated and incorporated into Iraqi administrative structures (see para. 28 (c) above). Reportedly, several private companies were also dissolved.

228. Orders were also given to dismantle and transfer other public and private property to Iraq, including libraries and research data from educational and scientific institutions (see paras. 213-215 above), technical equipment from hospitals (see paras. 192 and 193 above) and manuscripts and works of art from religious and cultural institutions (see para. 171 above), as well as from museums, including the Dar al-Athar al-Islamiyyah National Museum and some private collections (for details see the UNESCO report by Professor Iba Der Thiam, Special Representative of the Director-General, May 1991, p. 25). Ministries, as well as offices and commercial premises of private owners, were also dismantled or pillaged. In such cases, the premises were often heavily damaged or completely destroyed after their contents had been dismantled. The Special Rapporteur received allegations that in some cases teams of specialists from Iraq dismantled technical and other equipment according to lists brought with them and signed with orders by Iraqi civil or military authorities.

229. On several occasions, houses of arrested persons were looted or even destroyed for the purpose of reprisal. The Special Rapporteur saw the destroyed home of Captain Ahmad Mahmoud Kabazard, who was arrested in early September 1991 because of resistance activities. His home was reportedly burned when he was publicly executed in front of it on 16 September 1991. Another reported case of reprisal concerned some 18 houses on the periphery of a school compound which were partially destroyed by Iraqi occupying forces after the bodies of two Iraqi soldiers were discovered in the school compound (report of the Farah mission, S/22536, para. 35).

230. According to numerous reports, pillaging often took place during systematic searches of houses and city districts. On such occasions, members of the Iraqi armed forces on official duty took goods such as electronic appliances or destroyed private property. On other occasions, individual members of the Iraqi armed forces allegedly pillaged while off duty. (See also annex II, document 5).

231. During the period of occupation, houses, apartments, offices, shops, warehouses and similar places which were left untended because their owners had left the country or remained in hiding, were reportedly looted by individuals belonging either to the Iraqi occupying forces or to the civilian population residing in Kuwait.

232. Before their retreat, the Iraqi occupying forces systematically destroyed public and private buildings, such as offices or large hotels, industrial installations, including those of the Kuwaiti oil industry, and installations such as electrical power plants. (For details see the report of the Farah mission on the scope and nature of the damage inflicted on the infrastructure of Kuwait during the period of the Iraqi occupation, S/22535.)

233. Finally, reports were received describing the theft by Iraqi forces of the possessions of persons leaving Kuwait during the occupation. Such persons were allegedly systematically stripped of all their possessions at the border. The victims were said to have been foreign nationals, particularly women from Asian countries.

3. Assessment

234. Some cases of confiscation and dismantling or destruction of infrastructure and other public or private property may have been justified for compelling military reasons, or may otherwise have been justified under international law. This may, for example, be true for the confiscation of houses and their transformation for military use along the coast, where allied attacks and landings were expected.

235. Many instances of confiscation, dismantling or destruction of infrastructure and of other public or private property, however, were deliberate, premeditated, systematic and large scale. They violated the guarantees of the Fourth Geneva Convention because they were not necessitated by military considerations nor were they otherwise admissible under international law.

VI. CONTACTS WITH THE GOVERNMENT OF IRAQ

236. On the occasion of the presentation by the Special Rapporteur of the preliminary report (A/46/544) to the Third Committee at the forty-sixth session of the General Assembly, the delegation of Iraq expressed the wish of its Government to comment on the Special Rapporteur's findings. It was agreed in this regard that the Special Rapporteur would submit a memorandum containing specific questions, concerning his findings.

237. On 6 December 1991, the Special Rapporteur addressed the following letter to the Government of Iraq:

"Sir,

"With reference to Commission on Human Rights resolution 1991/67, by virtue of which I was appointed Special Rapporteur on the situation of human rights in Kuwait under Iraqi occupation, I have the honour to refer to my recent meeting of 20 November 1991 with members of your country's delegation at the Third Committee of the United Nations General Assembly in New York and to our meeting of today. These meetings were held after your representative in the Third Committee had expressed the wish to comment in detail on my preliminary report.

"At the meeting, the question was discussed how these comments could be made in a manner which would allow for a fruitful dialogue on the matters raised in my preliminary report. It was agreed that I would submit a memorandum to your Government, raising a series of questions concerning my findings. I indicated my hope that your Government would reply in time for them to be included in the final report to the Commission on Human Rights.

"If your Government should be interested in discussing other more general issues in regard to the situation of human rights in Kuwait under Iraqi occupation, these comments may be circulated at the upcoming session of the Commission on Human Rights as a separate document."

238. To this letter, the following memorandum, dated 6 December 1991, on questions regarding the situation of human rights in Kuwait under Iraqi occupation was attached:

"A. Prohibition of arbitrary arrest, detention and deportation

(1) Were civilians in Kuwait arrested in the context and for the reasons mentioned in paragraphs 24 and 25 of the preliminary report? Is it possible to indicate the number of such arrests? What were the guidelines for the treatment of such civilians? Please comment on the allegations that civilian detainees (i) included women and children; (ii) did not have access to lawyers in Kuwait; and (iii) in many cases were not allowed to contact their families.

"B. Prohibition of torture and cruel, inhuman and degrading treatment

(2) Thorough interviews conducted by myself with 39 persons who were reported to be victims of torture and who in some cases still demonstrated clear traces of maltreatment, or who as doctors had treated victims of torture, as well as the analysis of 117 summary records of interviews conducted by the Kuwaiti Association for the Defence of Victims of War with victims of torture (in several cases accompanied by medical reports) and other information, led me to the conclusion that torture had been only sporadic in the case of persons arrested during the days of the invasion or on 19 February 1991 and the following days, but that its use was systematic in the context of arrest and detention of persons suspected of belonging to the resistance. Please comment on these findings. Have there been any investigations or trials concluded during or after the occupation concerning the use of torture during the occupation of Kuwait?

"C. Right to life

(3) What were the laws and guidelines applicable in Kuwait for the imposition of the death penalty or for summary executions of persons whose activities were considered to be hostile under Iraqi law? What were the procedures for taking such decisions? Please comment in this context on point 4 of the enclosed document 11 (minutes of a meeting held on 23 August 1990), which reportedly was found after Iraqi withdrawal from Kuwait and states that persons who normally would be sentenced to more than one year's imprisonment because they threatened or disrupted security must be killed under the present circumstances.

"D. Economic, social and cultural rights and corresponding guarantees of the Fourth Geneva Convention

(4) Please describe the reasons for the transfer of equipment, books, research data etc. from hospitals, university faculties, the Kuwaiti Institute of Scientific Research (KISR) and cultural institutions, and for the destruction of some of these institutions (e.g. KISR). Please describe possible measures which were taken in order to achieve or safeguard the right to health and the right to education and to the enjoyment of scientific progress.

"E. Missing persons

(5) Please explain your position concerning the problem of missing persons who were arrested and detained in Kuwait during the period of the occupation and comment on my recommendations in paragraph 109 of the preliminary report."

239. No answer to these questions was received from the Government of Iraq by 15 January 1992 when, for technical reasons, this report had to be finalized. Any answers which may be received after that date will therefore be published as an addendum to this report.

VII. CONCLUSIONS AND RECOMMENDATIONS

A. Main findings

240. The Special Rapporteur has endeavoured to carry out his mandate as fully and objectively as possible. He was able to secure the cooperation of the Kuwaiti authorities, who allowed him to accomplish his task with the fullest degree of independence. In order to compile the information necessary for the fulfilment of his mandate, the Special Rapporteur, during his two visits to Kuwait, interviewed a large number of persons who reported being victims or eyewitnesses of human rights violations committed by the Iraqi occupying forces; he himself witnessed some of the destruction affecting economic, social and cultural rights. He also analysed documentary and photographic evidence provided to him by individuals and organizations, as well as reports by governmental and non-governmental organizations. He further studied and took into account reports Iraq has submitted to various United Nations bodies as well as relevant Iraqi legislation, to the extent that it was accessible and related to his mandate. The Special Rapporteur emphasizes that his report is based only on information corroborated by several sources and that isolated allegations have been excluded. Individual cases mentioned in the report are intended to illustrate observations based on more general information.

241. The most important findings of this report can be summarized as follows.

242. With regard to the prohibition of arbitrary arrest, detention and deportation, available information indicates that several thousand civilians, comprising Kuwaiti citizens, stateless residents of Kuwait (bidoun) and citizens of other Arab States, including those of Palestinian origin, were arrested, detained for prolonged periods and in many cases even deported to Iraq. The mass arbitrary or prolonged detention of civilians in many cases was not justified even in terms of military necessity and in a large majority of cases, detentions were undertaken in violation of the procedural rights guaranteed by the Fourth Geneva Convention which also prohibited the deportation of civilians to Iraq. In addition, considerable numbers of third-country nationals were deported to Iraq, where some of them, in violation of article 28 of the Fourth Geneva Convention, were used as human shields at strategic sites. Diplomatic and consular staff of several countries were confined to the compounds of their embassies, in violation of basic principles of international law.

243. Concerning torture and cruel, inhuman and degrading treatment, it can be concluded that such methods, in violation of the basic guarantees of international law, were systematically used during interrogations of many of those arrested during the time of the ongoing occupation. The most brutal forms of torture were reported in cases of persons suspected of belonging to the Kuwaiti resistance.

244. Regarding the right to life, there is ample evidence of widespread arbitrary and summary executions. Reportedly, many persons were executed after having been tortured. Some victims were executed without having been tried by a court. Where trials took place, they did not correspond to the relevant fundamental guarantees of fair trial, including those applicable in

times of war. Many executions were carried out in public or in front of families, and dead bodies were exposed in public for the purpose of spreading terror among the civilian population.

245. More than 2,000 persons are reported by their families as still missing in Kuwait. There are strong reasons to believe that among these persons many were arrested and detained by the Iraqi occupying forces and were never released. Iraq has, furthermore, failed to provide information about cases of death occuring in detention and about death sentences imposed on prisoners of war and civilian internees, as is required by the Third and Fourth Geneva Conventions.

246. Among economic, social and cultural rights, the right to enjoy the highest attainable standard of health was particularly infringed by the severe reduction of the health-care system of Kuwait, which led to a sharp increase of mortality within health-care institutions. Important reasons for this severe reduction of health care were reportedly the closing, dismantling and pillaging of some important health facilities and the massive departure of health professionals, who left as a consequence of acts of violence and intimidation by the Iraqi occupying forces. Whether the causing of large-scale environmental damage will severely affect the health of large parts of the population concerned, and thus amount to a violation of the right to enjoy the highest attainable standard of health as it is guaranteed also in times of armed conflict, cannot yet be determined; however, such actions in any case contradicted "the usages established among civilized peoples, ... and the dictates of the public conscience" which, in accordance with the Martens clause, have to be observed at all times and without exception.

247. Other economic, social and cultural rights and the corresponding guarantees of the Fourth Geneva Convention were mainly violated by the systematic dismantling, pillaging and destruction of educational, research and cultural institutions, as well as of important parts of the infrastructure of Kuwait and of private property.

248. As regards violations of other rights, some isolated incidents were reported to the Special Rapporteur, but the violations were not described as systematic or large-scale.

B. Responsibility and compensation

1. State responsibility

249. According to a well-established principle of international law, there is "an internationally wrongful act of a State when: (a) conduct consisting of an action or omission is attributable to the State under international law; and (b) that conduct constitutes a breach of an international obligation of the State" (art. 3 of the International Law Commission's draft articles on state responsibility, Part one, document A/CN.4/SER.A/1975/Add.1). It is also generally recognized in international law that the conduct of organs of a State acting in that capacity is attributable to that State even if in a particular case the organ exceeded its competences or contravened instructions (see A/CN.4/SER.A/1975/Add.1, arts. 5 and 10). Therefore, violations of human

rights as embodied in international customary law or in the applicable treaty law generate the international responsibility of Iraq where these violations can be attributed to Iraq because they were committed by its organs.

250. More specifically, article 131 of the Third and article 148 of the Fourth Geneva Convention state that in respect of grave breaches "no High Contracting Party shall be allowed to absolve itself ... of any liability incurred by itself". Grave breaches are, in the terms of article 147 of the Fourth Geneva Convention, "those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of the hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in this Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly". Article 130 of the Third Geneva Convention contains an almost identical list regarding unlawful acts committed against prisoners of war.

251. The Security Council explicitly recognized the applicability of these principles in the present case. In its resolution 687 (1991) it reaffirmed that Iraq "is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait" (see also Security Council resolutions 674 (1990) and 686 (1990)). It also affirmed "that the Fourth Geneva Convention applies to Kuwait and that as a High Contracting Party to the Convention Iraq ... in particular is liable under the Convention in respect of the grave breaches committed by it" (resolutions 670 (1990) and 674 (1990)).

252. The Special Rapporteur concludes, on the basis of the information available to him, that Iraq is internationally responsible for the violations of human rights described in this report. Except for certain categories of pillage of private property and of rape, these acts can be attributed to organs of the State of Iraq acting in their official capacity. Some of these acts, especially the summary and arbitrary executions, the widespread and systematic acts of torture, the deportation of large numbers of civilians to Iraq, the use of third-country nationals as "human shields", and the extensive destruction of important parts of the infrastructure of Kuwait, including health-care and educational facilities, amount to grave breaches in the sense of the Geneva Conventions.

253. Concerning the specific role of different organs of the State of Iraq which violated human rights and the corresponding provisions of the Geneva Conventions, only some very general remarks are possible. The Special Rapporteur received numerous reports that Iraqi Intelligence Services, among them Gulf Intelligence (Muhabarat al-Khalij), Security Services in Kuwait (Amn al-Kuwait) and Gulf Military Intelligence (Istihbarat al-Khalij), were mainly responsible for torture. They may also have been responsible for ordering many of the summary executions of persons who had been arrested and tortured; allegedly executions in public or in front of families were,

however, normally carried out by members of the armed forces. The Special Rapporteur was informed by eyewitnesses of such events that the dismantling of appliances and equipment in hospitals and educational or research institutions and their transfer to Iraq was often ordered by the relevant ministries in Baghdad and other civilian authorities. The armed forces were responsible for other destruction, including that of the oilfields.

2. Individual Responsibility

254. Individual responsibility for the most serious violations of human rights and humanitarian norms is generally recognized, at least for times of armed conflict. In this regard, the concept of crimes against humanity as embodied in the Nuremberg Charter (article 6 of the Charter of the International Military Tribunal, Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, 82 UNTS 280) reaffirmed by United Nations General Assembly resolutions (see resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946) and further developed in the work of the International Law Commission has to be mentioned.

255. The International Law Commission, at its forty-third session, provisionally adopted, on first reading, several draft articles of a draft code of crimes against the peace and security of mankind (A/46/10, paras. 60-176). Draft article 3, paragraph 1, stipulates that "[a]n individual who commits a crime against the peace and security of mankind is responsible therefore and is liable to punishment". Article 21 of the draft code, entitled "Systematic or mass violations of human rights", provides for the punishment of any "individual who commits or orders the commission of any of the following violations of human rights: - murder; - torture; - establishing or maintaining over persons a status of slavery, servitude or forced labour; - persecution on social, political, racial, religious or cultural grounds in a systematic manner or on a mass scale; or deportation or forcible transfer of population". Draft article 22, paragraph 1, of the draft code, provides that individuals will be sentenced for "an exceptionally serious war crime". Paragraph 2 (a) of article 22 stipulates that "an exceptionally serious war crime is an exceptionally serious violation of principles and rules of international law applicable in armed conflict consisting of any of the following acts: (a) acts of inhumanity, cruelty or barbarity directed against the life, dignity or physical
or mental integrity of persons [, in particular wilful killing, torture, mutilation, biological experiments, taking of hostages, compelling a protected person to serve in the forces of a hostile Power, unjustifiable delay in the repatriation of prisoners of war after the cessation of active hostilities, deportation or transfer of the civilian population and collective punishment]".

256. Whereas the exact content of these crimes against peace and security and against humanity, as well as their precise standing in international law remain to be determined, article 129 of the Third and article 146 of the Fourth Geneva Convention are directly applicable in the present case. According to these articles, States parties to the Conventions "undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches" of the two Conventions as defined in their articles 130 and 147 (see para. 241 above); they are also "under the obligation to search for persons alleged to

have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts" if these persons are not extradited to another State party.

257. It is neither the task of the Special Rapporteur to report on individuals allegedly responsible for grave breaches nor could this be done with the means available to him. Therefore, the Special Rapporteur, fully aware of the limits of such a proposal, recommends proceeding against individuals responsible for grave breaches of violations of humanitarian norms on the basis of article 129 of the Third and article 146 of the Fourth Geneva Convention. This would be in line with Security Council resolutions 670 (1990) and 674 (1990) reaffirming the applicability of the Fourth Geneva Convention to Kuwait and the liability under this Convention not only of the State of Iraq but also of "individuals who commit or order the commission of grave breaches".

3. Compensation

258. In paragraph 18 of its resolution 687 (1991) the Security Council decided to create "a fund to pay compensation for claims that fall within paragraph 16" of the same resolution. In paragraph 16, the Security Council reaffirmed that Iraq was liable under international law for, inter alia, "injury to foreign ... nationals ..., as a result of Iraq's unlawful invasion and occupation of Kuwait".

259. The establishment of the fund ensures that compensation will be paid for material damage caused to public and private property in Kuwait. This means that there will be compensation for important aspects of the violation of economic, social and cultural rights and the corresponding guarantees of international humanitarian law, namely the dismantling, pillaging and destruction of health-care, educational, research and cultural institutions and facilities.

260. The Special Rapporteur recommends that victims of other types of human rights violations and grave breaches of humanitarian norms should also be compensated for their injuries, including non-material damage. Such compensation would be covered by the broad wording of paragraph 16 of Security Council resolution 687 (1991) which provides not only for compensation for "direct loss" and for "damage" but also for "injury to foreign ... nationals". It also would be in line with recent developments in international law, where the principle of compensation for victims of human rights violations is gradually gaining acceptance. Thus, the Human Rights Committee, set up within the framework of the International Covenant on Civil and Political Rights, has interpreted the obligation of States parties as embodied in article 2, paragraph 3 (a), of the Covenant to provide victims with an "effective remedy" as including the obligation to pay compensation for violations which otherwise cannot be redressed (for details, see the study by Theo van Boven, concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, E/CN.4/Sub.2/1991/7, paras. 14-23). Similarly, the Inter-American Court of Human Rights extrapolated from the obligation embodied in article 1 of the American Convention on Human Rights, which ensures all persons subject to the jurisdiction of a Contracting State the free and full exercise of the

guarantees of the Convention, an obligation to provide compensation for damages resulting from human rights violations (E/CN.4/Sub.2/1991/7, para. 29, quoting Judgement, Inter-American Court of Human Rights, Series C, No. 4/1988, para. 166). The European Court of Human Rights, in accordance with article 50 of the European Convention on Human Rights, "shall, if necessary, afford just satisfaction to the injured party".

261. Compensation should be granted to victims of human rights violations regardless of their nationality and their present status in Kuwait in order to make sure that victims of human rights violations committed by Iraq who have left Kuwait since 26 February 1991 or who are stateless are also justly compensated.

C. Recommendations

262. The Special Rapporteur recommends that the competent organs of the United Nations:

(a) Urge the Government of Iraq to comply fully with General Assembly Resolution 46/135, entitled "Situation of human rights in Kuwait under Iraqi occupation" (see annex III), and especially,

(i) To provide information on all persons deported from Kuwait between 2 August 1990 and 26 February 1991 who may still be detained, and to release these persons without delay, in accordance with its obligations under article 118 of the Third Geneva Convention and articles 133 and 134 of the Fourth Geneva Convention;

(ii) To provide, in accordance with its obligations under articles 120 and 121 of the Third Geneva Convention and articles 129, 130 and 131 of the Fourth Geneva Convention, detailed information on all persons arrested in Kuwait between 2 August 1990 and 26 February 1991 who died during or after that period while in detention, as well as information on the location of their graves;

(iii) To provide, in accordance with its obligations under articles 101 and 107 of the Third Geneva Convention and articles 74 and 75 of the Fourth Geneva Convention, detailed information on all executions of persons arrested in Kuwait between 2 August 1990 and 26 February 1991 carried out in Kuwait or Iraq during or after that period and to provide information about the location of their bodies.

(iv) To search for the persons still missing and to cooperate with international humanitarian organizations such as the International Committee of the Red Cross in this regard, as well as to facilitate the work of such organizations in their search for and eventual repatriation of all missing persons;

(b) Urge Governments concerned to allow for the repatriation of any person deported from Kuwait to Iraq to the country of their former habitual residence;

(c) Invite the Government of Kuwait to take all measures within its capacity and to cooperate with international organizations to identify all remaining unidentified persons killed in Kuwait, for the purpose of clarifying these cases of missing persons for their relatives;

(d) Urge the Government of Iraq to bring all laws, decrees, regulations and directives relevant to the treatment of civilians by security and armed forces into line with the international instruments for the protection of human rights to which Iraq is a party and to train the members of such forces in this regard;

(e) Invite all States concerned to proceed against individuals responsible for grave breaches by the Iraqi occupying forces of humanitarian norms, on the basis of article 129 of the Third and article 146 of the Fourth Geneva Convention;

(f) Provide for compensation, through the compensation fund established in accordance with Security Council Resolution 687 (1991), for victims of human rights violations and grave breaches of humanitarian norms committed by the Iraqi occupying forces, regardless of their nationality and present status.

Annex I

PLACES OF DETENTION IN KUWAIT

The following list of places of detention was established on the basis of an analysis of almost 150 interviews with former detainees conducted either by the Special Rapporteur or by the Kuwaiti Association for the Defence of Victims of War. An asterisk denotes places at which interviewed persons reported having been tortured or maltreated.

Abdullah al Salem area police station*

Abdullah Salem secondary school*

Abdullah Mobarak secondary school*

Al Ahdath Youth Prison*

Arridiyah police station

Bar Mashraf Palace*

Bayan police station*

Bishr Al Roumi School in Dahia

Dahia police station*

Dashma police station

Doha primary school

Fahaheel police station*

Farwaniya Governorate*

Farwaniya police station*

Fintas police station*

Firdaws police station*

Harissa police station

Hawalli police station*

House of Abul Abbas in Amman Street (behind Arts Centre)*

House behind Bibi Salim complex

House in Share Askandariya

House of Sheikh Hamoud Al Sabah*

Iraqi Embassy building*

Jaberiyah Intelligence Sector

Jahra: Municipality;* Police station;* building of Teachers' Association*

Jalib Al Shuwaikh police station*

Khitan police station*

Kuwait Military Academy and Police Academy*

Mashatel in Rabiah*

Nayef Palace (Governorate /Al Mohafaza)*

Nogra police station*

Palace of Justice*

Qadissiyah: Police station;* Qadissiyah Club*

Rumaithiya police station*

Sabah Al Salem police station*

Sabah police station in the city centre*

Salibiyah police station*

Salmiyah police station*

Salwa police station

Sheraton Hotel*

Shuwaikh: Police station;* secondary school*

Shuweh police station

Sulaibikhat police station

Annex II

DOCUMENTS ALLEGEDLY FOUND IN KUWAIT AFTER THE IRAQI WITHDRAWAL

As the Special Rapporteur himself witnessed, a large number of Iraqi documents were found in premises used by the Iraqi occupying forces in Kuwait. The following documents, translated from Arabic, were provided to the Special Rapporteur by governmental and non-governmental bodies in Kuwait. The full text in Arabic as well as an English translation can be received from the Centre for Human Rights. The Special Rapporteur has included these documents without taking position on their authenticity.

Document No. 1 (Excerpts)

Arab Baath Socialist Party

Southern Organizational Office

Ref: S/97 Date: 22/2/1991

To: The Secretary of the Misan District Command
The Deputy Commander of the Southern Region
The Governor of Misan

Subject: Custody of detainees

You are requested to make arrangements for the (temporary) detention of 750 persons arrested in the province of Kuwait. They will arrive at the popular army camp in Misan at 1 p.m. tomorrow.

Premises should be prepared for their detention within the popular army camp or at any other locations that you may deem appropriate. They should be treated as prisoners and kept under heavy armed guard.

The task of feeding them etc. shall be shared by the disctrict commands in your province...

For information and action

(Signed) Comrade Abdul Ghani Abdul Ghaffour
Member of the Country Command and
Commander of the Popular Army in
the Southern Region

22/2/1991

(Note by the Special Rapporteur: An identical document with the same date and from the same source was received which announced the transfer of another 500 detainees to Basra.)

Document No. 2

From the Kuwait Police Forces Command

Ref: 1817 Date: 28/9/1990

To: List A

Arrest warrant

Further to letter No. Sh S/910 of 22/9/1990 from the Directorate of Security in the province of Kuwait, referring to letter No. 73 of 18/9/1990 from the Gulf Intelligence Organization informing us that a person driving a white Chevrolet bearing commercial licence plate number 5614 F distributed pamphlets at the petrol station opposite the headquarters of the fire brigade at Salimiya and that one of those pamphlets, which came into our possession, contained a text entitled "Who is Saddam?", you are instructed to be on the look-out for the above-mentioned vehicle and to arrest its occupants as soon as possible. Please keep us informed.

(Signed) Major-General Suriyan Tawfiq Hussein
Commander of the Kuwait Police Forces

28/9/1990

cc: Directorate of Security in the province of Kuwait, with reference to your above-mentioned letter.

Document No. 3

Republic of Iraq

Ministry of Health

Department: Kuwait Health

Section: Administrative Affairs

Ref: 739 Date: 15/9/1990

To: Comrade Ali Hassan al-Majid, Member of the Country Command

Subject: Transfer of health centres

On the basis of the study of the province of Kuwait's needs in regard to health centres, it has been decided to close the health centres included on the attached list and, after consultation with the Minister of Health, it has been deemed appropriate to transfer the appliances, equipment, furniture and medicines to Baghdad. Trusting that this will meet with your approval, I remain,

Yours faithfully,

(Signed) Dr. Abdul Jabbar Abdul Abbas
Director-General supervising the
Kuwait Health Department

cc: Ministry of Health/Office of the Minister, for information
Office of the Director-General
Administrative Affairs Section/Administrative Services,
Mr. Hassan Ja'az, with the originals ...

(Note by the Special Rapporteur: The list attached to this document mentions 36 inoperative health centres).

Document No. 4 (Excerpt)

Top-Secret

Operational Headquarters of the 18th Battalion of Field Engineers

Ref: Ops/6/323 Date: 2 December 1990

To: The 1st Company

Subject: Directives for the demolition of the wells that are being prepared for eventual sabotage

I refer to the top-secret letter No. 2306 dated 28 November 1990 from the Commander of the 3rd Corps of Military Engineers.

In view of the extreme importance of the oil-wells, the requisite preparations must be made for their demolition in anticipation of the issue of an order to that effect. The following directives will ensure the successful fulfilment of that task.

1. The explosive charge must be placed in direct contact with the well, in the place indicated on the plan sent to you with our top-secret letter No. 213 dated 19 November 1990.

2. The quantity of explosives used must not be less than 30 lbs per well.

3. More than one device must be used to trigger the explosion of the wells (tw devices).

4. The targets prepared for demolition must be rendered safe for the time being.

5. The demolition wires must be laid to a place near the wells.

6. Each group of wells must be connected to a single circuit.

7. The commander of each team must prepare an advanced plan to blow up the wells and this plan must be clearly understood by all the members of the team ...

10. The direction of the prevailing wind must be noted and the group of wells situated furthest downwind must be blown up first, followed by the second furthest, etc.; in order to prevent the smoke billowing from the exploding wells from affecting the following group ...

16. There must be constant coordination with the commander of the demolition guard and the triggering device must be placed close to the command post of the commander of the demolition guard.

17. The officer in charge of the demolition firing party takes his orders from the commander of the demolition guard, who will sign the special form when the order is received.

(Signed) Captain Nabhan Fa'iq Hassan
Commander of the 18th Battalion
of Field Engineers

Document No. 5

Office of the President of the Republic Secretary

Directorate of Public Security

Directorate of Security in the Province of Kuwait

Ref: Sh S/1525 Top-secret Date: 16/10/1990

To: All District Directors of Security

Phenomenon

Many people are talking about a new phenomenon that has appeared among the police rescue and traffic control units which, when they wish to rob shops, close oft the roads and instruct accomplices to fire shots in order to clear the streets when the robbery has been completed. You are requested to take note and repress that stratagem, which is detrimental to the image of Iraq and its forces.

(Signed) Director of Security
in the Province of Kuwait

16/10/1990

cc: Special Forces Command and the Directors of the Gulf Intelligence Services

(Translator's note: There is a handwritten comment: "Yes, this is a new ball game".)

Annex III

GENERAL ASSEMBLY RESOLUTION 46/135

Situation of human rights in Kuwait under Iraqi occupation

The General Assembly,

Recalling its resolution 45/170 of 18 December 1990,

Guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, 65/ the International Covenants on Human Rights 84/ and the Geneva Conventions of 12 August 1949, 124/

Aware of its responsibility to promote and encourage respect for human rights and fundamental freedoms for all and resolved to remain vigilant with regard to violations of human rights wherever they occur,

Reaffirming that all Member States have an obligation to promote and protect human rights and fundamental freedoms and to fulfil obligations they have freely undertaken under the various international instruments,

Expressing its grave concern at the grave violations of human rights and fundamental freedoms during the occupation of Kuwait,

1. Takes note with satisfaction of Commission on Human Rights resolution 1991/67 of 6 March 1991; 69/

2. Expresses its appreciation to the Special Rapporteur on the Situation of Human Rights in Kuwait under Iraqi Occupation for his preliminary report; 130/

3. Expresses its deep concern for Kuwaiti and third-country national detainees and missing persons in Iraq;

4. Requests the Government of Iraq to provide information on all Kuwaiti persons and third-country nationals deported from Kuwait between 2 August 1990 and 26 February 1991 who may still be detained and to release, in accordance with its obligations under article 118 of the Geneva Convention relative to Prisoners of War 131/ and article 134 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 132/ these persons without delay;

5. Also requests the Government of Iraq to provide, in accordance with its obligations under articles 120 and 127 of the Geneva Convention relative to Prisoners of War, and articles 129 and 130 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, detailed information on persons arrested in Kuwait between 2 August 1990 and 26 February 1991 who may have died during or after that period while in detention, as well as on the site of their graves;

6. Further requests the Government of Iraq to search for the persons still missing and to cooperate with international humanitarian organizations, such as the International Committee of the Red Cross, in this regard;

7. Further requests that the Government of Iraq cooperate and facilitate the work of international humanitarian organizations, notably the International Committee of the Red Cross, in their search for and eventual repatriation of Kuwaiti and third-country national detainees and missing persons.

Notes

130/ A/46/544 and Corr.1.

131/ United Nations, Treaty Series, vol. 75, No. 972.

132/ Ibid., No. 973.